SENATE SÉNAT

CANADA

CONSUMER PROTECTION IN THE FINANCIAL SERVICES SECTOR:

THE UNFINISHED AGENDA

Report of the
Standing Senate Committee on Banking, Trade and Commerce

The Honourable Jerahmiel S. (Jerry) Grafstein, Q.C., Chair
The Honourable W. David Angus, Q.C., Deputy Chair

and the Honourable Senators

Michel Biron
J. Trevor Eyton, Q.C.
D. Ross Fitzpatrick
Yoine Goldstein
Mac Harb
Céline Hervieux-Payette, P.C.
Paul J. Massicotte
Michael A. Meighen, Q.C.
Wilfred P. Moore, Q.C.
David Tkachuk

June 2006

Ce document est disponible en français.

* * *

This report and the Committee's proceedings are available online at

www.senate-senat.ca/bancom.asp.

Hard copies of these documents are also available by contacting
the Senate Committees Directorate at (613) 990-0088 or at
banking_banques@sen.parl.gc.ca.

CONSUMER PROTECTION IN THE FINANCIAL SERVICES SECTOR:

THE UNFINISHED AGENDA

Report of the
Standing Senate Committee on Banking, Trade and Commerce

(reprint)

June 2006

MEMBERSHIP

The Honourable Senator Jerahmiel S. (Jerry) Grafstein, Q.C., Chair

The Honourable Senator W. David Angus, Q.C., Deputy Chair

and

The Honourable Senators:

Michel Biron
J. Trevor Eyton, Q.C.
D. Ross Fitzpatrick
Yoine Goldstein
Mac Harb
* Daniel P. Hays (or Joan Fraser)
Céline Hervieux-Payette, P.C.
* Marjory LeBreton, P.C. (or Gerald J. Comeau)
Paul J. Massicotte
Michael A. Meighen, Q.C.
Wilfred P. Moore, Q.C.
David Tkachuk

** Ex Officio Members of the Committee*

Other Senators who have participated on this study:

The Honourable Senators Tommy Banks, Maria Chaput, Leonard J. Gustafson, James F. Kelleher, Q.C., P.C., Donald H. Oliver, Q.C. and Madeleine Plamondon.

Parliamentary Information and Research Service, Library of Parliament:
June Dewetering, Acting Principal
Philippe Bergevin, Analyst
Sheena Starky, Analyst

Senate Committees Directorate:
Matthieu Boulianne, Administrative Assistant

Staff from the 38th Parliament, 1st Session:
Parliamentary Information and Research Service, Library of Parliament:
Jean Dupuis, Analyst
Senate Committees Directorate:
Gérald Lafrenière, Clerk
Nicole Bédard, Administrative Assistant

Clerk of the Committee
Dr Line Gravel

ORDER OF REFERENCE

Extract from the *Journals of the Senate* of Tuesday, May 2, 2006:

The Honourable Senator Grafstein moved, seconded by the Honourable Senator Joyal, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report on consumer issues arising in the financial services sector. In particular, the Committee shall be authorized to examine:

- the impact of federal legislation and initiatives designed to protect consumers within the financial services sector;
- the role, corporate governance structure and effectiveness of agencies (including supervisory/regulatory and self-regulating), ombudspersons and others who play a role with respect to consumer protection and the supervision of the financial services sector;
- consumer credit rates and reporting agencies; and
- other related issues;

That the papers and evidence received and taken on the subject during the Thirty-eighth Parliament and any other relevant Parliamentary papers and evidence on the said subject be referred to the Committee; and

That the Committee submit its final report no later than June 30, 2006, and that the Committee retain until July 31, 2006 all powers necessary to publicize its findings.

After debate,

The question being put on the motion, it was adopted.

Paul C. Bélisle

Clerk of the Senate

TABLE OF CONTENTS

Please note that this summary of the recommendations should be read in the context of the reasoning presented in the body of the report. For an indication of the appropriate section of the report, please see the page number at the end of the recommendation.

RECOMMENDATIONS

1. **The federal government, in partnership with provincial/territorial ministries of education, the Financial Consumer Agency of Canada, educational institutions, consumer organizations and other stakeholders, develop a model curriculum to provide education about the full range of consumer issues, including financial matters.**

   In designing the curriculum, consideration should be given to the development of information and education that is:

   - **appropriate to different financial circumstances and situations;**
   - **suitable for delivery by a variety of institutions and agencies; and**
   - **capable of being understood by people throughout their lifetime, beginning at the earliest levels of primary education and continuing throughout post-secondary education and beyond.** ***(page 57)***

2. **The federal government increase funding for federal departments and agencies to enable them to carry out better their consumer information and consumer education functions, particularly with respect to the financial services sector.**

   Moreover, in determining the expenses used to calculate the base assessment applied to financial institutions regulated by the Financial Consumer Agency of Canada, the Agency's Commissioner should ensure that the expenses are adequate to enable the Agency to meet the current and anticipated growing demand for its products and services, as well as its mandate.

   Federal departments and agencies, as well as the Financial Consumer Agency of Canada, should evaluate their information and education activities on an ongoing basis to assess the extent to which the needs of consumers continue to be met. Moreover, similar evaluations should be undertaken by an independent entity on a periodic basis. Any changes required as a result of the self- and/or independent evaluations should be made expeditiously. ***(page 58)***

3. **The federal government, along with provincial/territorial governments, act to ensure the appointment of a Financial Services Ombudsperson in place of the existing Ombudsman for Banking Services and Investments, the General Insurance OmbudService and the Canadian Life and Health Insurance OmbudService. The**

Ombudsperson, his or her office and the board of directors should respect specified guidelines to ensure independence, transparency, accessibility and efficiency.

Regarding independence and transparency, the following guidelines should be respected:

- **at least 75% of the members of the 15-member board of directors should be independent of participating financial institutions;**
- **future independent directors should be selected by incumbent independent directors;**
- **directors who are not independent should be representative of the full range of participating financial institutions;**
- **the board of directors should select the Ombudsperson;**
- **the Ombudsperson should serve at the pleasure of the board of directors, with the agreement of 75% of the independent directors required to replace the Ombudsperson; and**
- **the Ombudsperson should annually report to Parliament and appear before appropriate committees of Parliament.**

Regarding accessibility, the following guidelines should be respected:

- **the office should provide a single point of access for consumer complaints regarding any financial service provided by a federally regulated financial institution, and provincially chartered and unregulated financial institutions on a voluntary basis;**
- **consumers should be able to initiate a complaint through a variety of means, including electronically through the office's website, with a video presentation itemizing the steps in the dispute resolution process; and**
- **the complaint resolution processes of the Ombudsperson should be available at no cost to the aggrieved consumer, with the services funded by participating financial institutions in accordance with an assessment rate determined by the board of directors.**

Regarding efficiency, the following guidelines should be respected:

- **complaints should be received by the office following the completion of internal dispute settlement processes within participating financial institutions;**
- **the Ombudsperson should make non-binding recommendations, including for restitution and compensation;**
- **the Ombudsperson should be able to make public any instances where recommendations are not fully implemented by the financial institution; and**

- **aggrieved consumers, as well as financial services providers that must pay restitution pursuant to a recommendation by the Ombudsperson, should have recourse to the courts.**

The Financial Services Ombudsperson should be appointed as soon as practicable but no later than 30 June 2007. (*pages 64-65*)

4. **The federal government study the means by which federally regulated financial institutions may better provide access, by individuals and businesses, to reasonably priced credit. This study should be tabled in Parliament as soon as practicable but no later than 30 June 2007. *(page 68)***

5. **The Financial Consumer Agency of Canada regularly review its information designed to assist consumers in making decisions about financial services providers, fees and products. The Agency should ensure that this information is user-friendly, readily available and accessible in a variety of formats. *(page 69)***

6. **The federal government, on a priority basis, give appropriate legislative action to the changes to the *Bills of Exchange Act* proposed by the Canadian Payments Association. *(page 71)***

7. **The federal government, with a view to enhancing competition, undertake a comprehensive review of the barriers to entry into the financial services sector for both domestic and international competitors.**

   The government should then act expeditiously to remove any unnecessary barriers.

   A report on actions to be taken in this regard should be tabled in Parliament as soon as practicable but no later than 30 June 2007. *(page 75)*

8. **The Department of Finance, on a priority basis, meet with financial institutions to renew efforts to ensure clear, simple and concise financial services contract documents.**

   The federal government should table a report in Parliament, as soon as practicable but no later than 30 June 2007, on the extent to which contract documents have been clarified and simplified. *(page 76)*

9. **The federal government, on a priority basis, undertake a comprehensive study of alternative financial services providers, including the payday loan industry.**

In order to protect the interests of the consumer, the study of alternative financial services providers should examine topics that include:

- **their growth over time, both in the number of service points and in the volume and value of business conducted;**
- **the reasons underlying their growth and increased use;**
- **the fees charged by them; and**
- **their regulation.**

The study should be completed as soon as practicable but no later than 30 June 2007. ***(page 80)***

10. The Financial Consumer Agency of Canada undertake an ongoing public education campaign to inform Canadians about the full range of issues related to their credit file and, in particular, the importance of assessing the accuracy of their file on a periodic basis. ***(page 83)***

11. Parliament, in its forthcoming review of the *Personal Information Protection and Electronic Documents Act,* examine the extent to which existing provisions ensure that the personal information of Canadian consumers of financial services products is protected, both domestically and internationally.

Should the provisions be found to be inadequate, the federal government should amend the Act on a priority basis. ***(page 85)***

12. The federal government work with the Canada Deposit Insurance Corporation (CDIC) to develop a mechanism by which the limit of protection for eligible deposits in CDIC-member institutions would be reviewed every five years.

During the review, the parties should consider the extent to which the limit should be increased to reflect such factors as inflation and the change in the average level of deposits held by Canadians and Canadian businesses, among others. Moreover, the limit should be established at a level that ensures a sufficient degree of protection for the majority of depositors. ***(page 86)***

13. The federal government take a leadership role and invite provincial/territorial governments and Canada's securities commissions to meet expeditiously with a view to establishing a common securities regulator no later than 30 June 2007. In the interim, efforts to harmonize securities regulation should be accelerated.

The regulator should be located in the National Capital Region. ***(page 91)***

14. The federal government appoint an eminent person to undertake a review of hedge funds. This review should include a focus on appropriate regulatory oversight, and should be tabled in Parliament no later than 31 March 2007. ***(page 92)***

15. **The federal government provide the necessary financial support for the Integrated Management Enforcement Teams and ensure that the teams include the appropriate number and mix of legal, regulatory, accounting, business and other skills needed to investigate corporate fraud and market illegalities.** ***(page 94)***

16. **The federal government examine existing procedures and increase resources to ensure more effective prosecution of corporate corruption.** ***(page 95)***

17. **The federal government take a leadership role and invite provincial/territorial governments and representatives of self-regulatory organizations – including the Investment Dealers Association of Canada and the Mutual Fund Dealers Association of Canada – to meet with a view to ensuring that such organizations operate in a manner that minimizes conflicts of interest and that ensures protection for the consumers of financial services.** ***(page 96)***

18. **Industry Canada and the Financial Consumer Agency of Canada work with representatives of the insurance industry on an ongoing basis with a view to ensuring that insurance products meet the needs of Canadians and Canadian businesses in terms of availability, cost and coverage.** ***(page 98)***

19. **The Financial Consumer Agency of Canada work with stakeholders to gather – and update continuously – information that would allow consumers to compare insurance products in order to identify the insurance provider and the insurance product that is best suited to their needs. This information should be available in a range of formats, including electronically.** ***(page 98)***

20. **The federal government, together with provincial/territorial governments as required, work with organizations representing investment and insurance professionals to ensure that public information is readily available on such topics as: commission rates; the proportion of fixed compensation; and contingent commissions.** ***(page 99)***

CONSUMER PROTECTION IN THE FINANCIAL SERVICES SECTOR: THE UNFINISHED AGENDA

CHAPTER 1: INTRODUCTION

On 16 November 2004, the Standing Senate Committee on Banking, Trade and Commerce was authorized to study consumer issues in the financial services sector, particularly:

- the impact of federal legislation and initiatives designed to protect consumers within the financial services sector;
- the role, corporate governance structure and effectiveness of agencies (including supervisory/regulatory and self-regulating), ombudspersons and others who play a role with respect to consumer protection and the supervision of the financial services sector;
- consumer credit rates and reporting agencies; and
- other related issues.

The Committee's authority was renewed on 2 May 2006, when Parliament returned following the 23 January 2006 federal election, thereby enabling reintroduction of the evidence heard during the course of the study and consideration of a report on this important topic.

In Canada, the federal government – like governments in many industrialized nations – has a history of protecting consumers that is decades-old, and provincial/territorial governments have also played a role. Federally, the 1935 *Report of the Royal Commission on Price Spreads* addressed such issues as consumer standards and specifications, the analysis and testing of consumer products, grade designations, false and misleading advertising, and a federal Trade and Industry Commission that would – among other things – administer new laws for the protection of the consumer and administer the regulation of new security issues for the protection of the investor.

By the 1960s, regulation of the Canadian marketplace had intensified, and was occurring in such areas as combines, mergers, monopolies, restraint of trade, patents, copyrights and trademarks, bankruptcy and insolvency, standards, labelling and inspection activities. As well, registration of a variety of instruments and documents related to business transactions was required.

In the early 1960s, a number of departments and Ministers had responsibility for federal regulation of the Canadian marketplace. Prompted by the 1962 report of the Royal Commission on Government Organization – the Glassco Commission – the *Government Organization Act, 1966* established the Department of the Registrar General. During debate in the House of Commons about the Department's establishment, concerns were focused on its responsibilities with respect to consumers. With continued Parliamentary interest in consumers and consumer affairs, in December 1966 and May 1967 a joint Senate-House of Commons committee endorsed the concept of a federal department responsible for consumer affairs.

In 1967, the Registrar General of Canada introduced legislation to create a Department of Corporate and Consumer Affairs to address such issues as misleading advertising, consumer credit, insider trading, fraud, deception, safety and conflict of interest. During third reading debate in the House of Commons, an amendment was proposed in order to give consumer affairs a higher profile. With the adoption of this amendment, the Department of Consumer and Corporate Affairs came into existence with the objective to promote "the fair and efficient operation of the marketplace in Canada."

Since, constitutionally, no single level of government has jurisdiction over all of the matters in which consumers are interested, the federal government came to be seen as protecting the consumer through regulating the marketplace, and provincial departments of consumer affairs became stronger.

The Department of Consumer and Corporate Affairs was relatively stable until 1993, when the federal government announced the most significant restructuring of the government ever undertaken. As a result of this restructuring, most of the responsibilities of the Department of Consumer and Corporate Affairs were transferred to the Department of Industry and Science – including market and business framework responsibilities – although certain responsibilities were transferred to other departments.

In 2001, with the passage of Bill C-8, An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions, consumers of financial services benefited from measures specifically designed to protect them in their dealings with federally regulated financial institutions.

While many of these measures have been successful in better protecting consumers of financial services, much remains to be done: the agenda remains unfinished. It has been just over five years since Bill C-8 was introduced in the House of Commons. Consumer complaints about a range of financial services issues continue to receive Parliamentary and media attention. A review of the measures enacted in 2001, as well as of voluntary actions taken by financial institutions, is needed.

It is from this perspective that the Committee studied how well consumers of financial services – both individuals and businesses – are being protected by a range of initiatives

and institutions currently in place. This report summarizes: what we heard about the responsibilities of federal departments and agencies in protecting consumers of financial services, and about the role played by industry-sponsored and/or industry-financed institutions in protecting consumers; and the changes that the Committee believes are needed in order to protect consumers better in the future.

Figure 1: The Four Pillars of the Financial Services Sector

FINANCIAL INSTITUTIONS

Financial institutions participate in financial transactions involving cash or financial products, normally as an intermediary. The primary role of these institutions is to facilitate the financing of investments, from home mortgages to the raising of funds via the issue of debt or equity for financing mega-projects. They also provide insurance, take on fiduciary responsibilities, and store cash and securities for safekeeping, among other functions.

BANKS

Banks are financial institutions that, in general, engage in the business of taking deposits, lending and providing other financial services.

TRUST COMPANIES

Trust companies are financial institutions that conduct the same activities as banks, through a network of branches. Because of their fiduciary role, however, trust companies can also administer estates, trusts, pension plans and agency contracts.

INSURERS

Insurers are financial institutions that engage primarily in the business of insuring risks. Insurance companies are generally divided into two categories: life and health insurers and property and casualty insurers.

SECURITIES DEALERS

Securities dealers are financial institutions that engage primarily in raising debt and equity capital for businesses and governments, as well as facilitating investment by retail customers.

Source: Department of Finance, *The Canadian Financial Services Sector*, June 2005, available at: http://www.fin.gc.ca/toce/2005/fact-cfsse.html; prepared by the Library of Parliament.

CHAPTER 2:
WHERE WE ARE: How Consumers of Financial Services are Protected Currently

INTRODUCTION

In Canada, constitutional jurisdiction over consumer protection is shared between the federal and provincial/territorial governments.[1] Consequently, since Canada's financial services sector is subject to overlapping jurisdictions and the pillars of the sector are evolving, consumer redress mechanisms as well as protection responsibilities are shared between the federal and provincial/territorial jurisdictions.

As well, financial institutions have established mechanisms to resolve certain consumer issues. Some of these measures are voluntary, while others are compulsory. Some pre-date the 2001 passage of Bill C-8, An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions, while others are a direct response to the legislation.

This chapter describes the role played by federal departments and agencies in protecting consumers of financial services, as well as industry measures to achieve the same goal. It is also important, however, to recognize the contribution of agencies at other levels of government in protecting consumers. For example, Canada's securities industry is regulated by the provinces/territories, each of which has its own securities regulator.[2] The 13 provincial/territorial regulators collaborate through the Canadian Securities Administrators, which aims to facilitate a national system of harmonized securities regulation, policy and practice while retaining regional flexibility.

[1] The federal Task Force on the Future of the Canadian Financial Services Sector – the MacKay Task Force – described the jurisdictional allocation of federal and provincial powers in relation to consumer protection as:

- the federal government regulates the consumer protection aspects of banks and banking
- the federal government regulates some consumer protection aspects of other federally incorporated financial institutions (trust and insurance companies) through its power to incorporate these institutions
- provincial governments regulate the standards of competence and behaviour of financial intermediaries, such as insurance brokers and agents, securities dealers, mortgage brokers and financial planners
- provincial governments regulate the sale and content of financial contracts of trust and insurance companies, as well as credit unions and caisses populaires, and some provinces also state or assert that their regulation of the financial service marketplace applies to banks.

Available at: http://www.fin.gc.ca/taskforce/rpt/pdf/BG3_E.pdf.

[2] The supervision of Canada's securities industry was not explicitly assigned to either level of government, but has fallen to the provinces/territories under the "property and civil rights" clause – section 92(13) – of the *Constitution Act, 1867*.

While securities legislation varies among the province/territories, there are common objectives: protecting investors; ensuring fair, efficient and transparent capital markets; and reducing systemic risk. All provincial/territorial securities regulators have responsibilities related to prospectus review and clearance, continuous disclosure, enforcement and compliance, regulation of traders and public education.

Currently, the provincial/territorial regulators delegate certain aspects of securities regulation to self-regulatory organizations, such as the stock exchanges, the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada and Market Regulation Services Inc.[3]

[3] Market Regulation Services Inc. is jointly owned by the TSX Group and the Investment Dealers Association of Canada.

CONSUMER PROTECTION MEASURES: DEPOSIT-TAKING INSTITUTIONS

A. The Role of the Federal Government and its Agencies

1. The Financial Consumer Agency of Canada

The federal government has exclusive jurisdiction over banks, which are regulated for both prudential and market conduct purposes under the *Bank Act*. Federal prudential oversight is provided by the Office of the Superintendent of Financial Institutions (OSFI), while the Financial Consumer Agency of Canada (FCAC) – since the passage of Bill C-8[4] – is responsible for monitoring consumer issues. Previously, the OSFI enforced the consumer-oriented provisions of federal financial institutions statutes. As well, the OSFI, the Department of Finance, Industry Canada and the Canada Deposit Insurance Corporation (CDIC) played a limited role in assisting consumers who had questions about the financial services sector and in providing information on certain financial products.

In particular, the Agency:

- enforces the provisions of federal financial institutions legislation – including the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan Companies Act* and the *Co-operative Credit Associations Act* – related to consumers[5] through a compliance framework, and may issue notices of violation and monetary penalties as well as publish names;
- monitors the financial services sector's self-regulatory measures designed to protect consumers and small businesses, such as voluntary codes and public commitments;
- promotes consumer awareness and understanding of the financial services sector through advertising, a website and reports; and
- responds to consumer enquiries, including identification of the organization to which complaints should be directed.

[4] Bill C-8, An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions, received Royal Assent in June 2001 and came into force in October 2001. Based primarily on the September 1998 recommendations of the federal Task Force on the Future of the Canadian Financial Services Sector (the MacKay Task Force), one of the bill's major goals was the protection of consumers. The four basic principles contained in the bill were: to promote the efficiency and growth of the financial services sector; to foster domestic competition in the sector; to improve the sector's regulatory environment; and to empower and protect consumers.

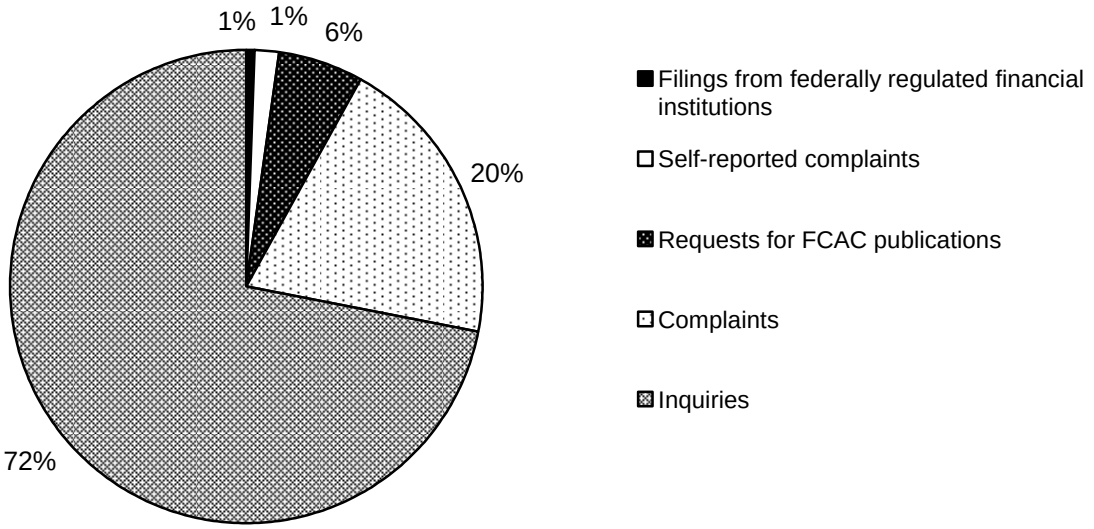
[5] These provisions focus on such consumer protection issues as: timely and accurate disclosure of specific information to consumers; opening a bank account; the cost of borrowing; the making of a complaint; ensuring that all Canadians have access to basic banking services, including the right to open a personal deposit account and to cash a federal cheque without charge; and oversight of branch closures.

The FCAC is not involved in dispute resolution; rather, it investigates breaches of consumer protection laws and regulations. It informs and educates through: mail inserts; publications; the national toll-free Consumer Contact Centre; a website; media contacts; participation at trade shows; presentations in schools and at conferences; partnerships with other federal departments and agencies, provincial ministries and such not-for-profit organizations as credit counsellors and immigration support groups; and the International Forum on Financial Consumer Protection and Education, for which the Agency serves as the Secretariat.

In 2004-2005, the Agency distributed 516,351 publications, which is an increase of 65% from 2003-2004 and 439% from 2002-2003. As well, there were 458,253 visits to the Agency's website in 2004-2005, which is an increase of 80% from 2003-2004 and 247% from 2002-2003. Between 1 April 2004 and 31 March 2005, the FCAC received 28,717 "contacts," including filings from federally regulated financial institutions, requests for publications, complaints (including self-reported complaints from financial institutions) and inquiries. Historically, the Consumer Contact Centre has been the Agency's primary point of access, with nearly 87% of Canadians who contacted the FCAC in 2003-2004 using the toll-free numbers.

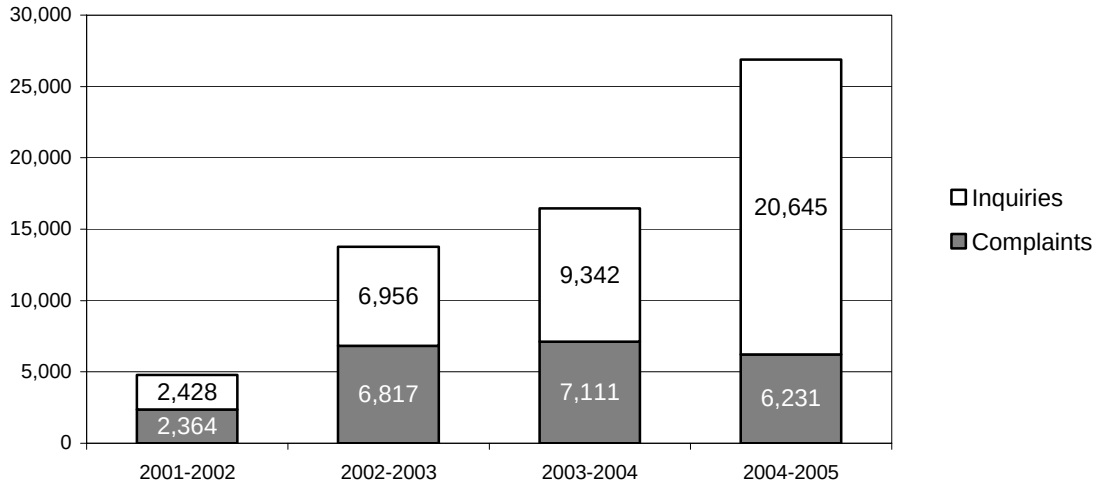
Between October 2001 and 30 November 2004, the Financial Consumer Agency of Canada's Commissioner identified 118 violations of the law by financial institutions under its purview. There were 62 letters of reprimand and 5 notices of violation issued during this period, and 5 administrative monetary penalties were administered; 38 determinations of non-compliance with their public commitments and codes of conduct were made. In all cases involving a violation, corrective measures were taken by the financial institutions to ensure future compliance.

Figure 2: Contacts with the Financial Consumer Agency of Canada, By Type, 1 April 2004 - 31 March 2005



Source: Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Financial Consumer Agency of Canada, Appendix A.

Figure 3: Complaints and Inquiries Received by the Financial Consumer Agency of Canada, 2001-2002 to 2004-2005



Notes: "Inquiries" include compliance- and non-compliance-related consumer inquiries; "complaints" include compliance- and non-compliance-related complaints by consumers, as well as self-reported complaints by financial institutions.

Source: Supplementary Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Financial Consumer Agency of Canada, 16 September 2005.

2. The Office of the Superintendent of Financial Institutions

The Office of the Superintendent of Financial Institutions:

- regulates and monitors federal depositary institutions – chartered banks as well as trust and loan companies – and pension plans to determine whether they are in sound financial condition and are meeting minimum plan funding requirements respectively, and to ensure they are complying with their governing legal and supervisory requirements;
- advises financial institutions and pension plans in situations of material deficiencies and may take – or require management, boards or plan administrators to take – necessary corrective measures;
- promotes the adoption of risk management and control policies; and
- monitors and evaluates system-wide or sectoral issues that may have a negative impact on financial institutions.

In pursuing its mandate, the OSFI also strives to protect the rights and interests of depositors, policy holders and creditors of financial institutions, as well as pension plan members, having due regard for the need to allow financial institutions to compete effectively and to take reasonable risks.

Trust and loan companies can be incorporated by either the federal or provincial level of government. Those that incorporate federally under the *Trust and Loan Companies Act* are regulated by the OSFI for prudential purposes and by the FCAC for consumer-related matters. A trust and loan company that is provincially incorporated can conduct business only in the province in which it is incorporated, and is subject to provincial regulation.

Credit unions and caisses populaires are incorporated provincially, and regulation for the purposes of prudential soundness and market conduct occurs almost exclusively at the provincial level. Nevertheless, a federal regulatory role exists outside Québec through national and provincial centrals. For example, Credit Union Central of Canada is chartered and regulated under the federal *Cooperative Credit Associations Act*, and many provincial centrals are federally regulated under that Act as well as at the provincial level. Both the national and provincial centrals are inspected by the OSFI for prudential purposes.

3. The Canada Deposit Insurance Corporation

The Canada Deposit Insurance Corporation insures eligible deposits,[6] up to $100,000 per insured deposit,[7] in banks, trust and loan companies, and certain cooperative credit associations against loss in the event of failure by a member institution.[8] The Corporation:

- issues deposit insurance policies to federal deposit-taking institutions as well as to some provincially incorporated institutions;
- promotes standards of sound business and financial practices;[9]
- monitors the financial condition of institutions;
- reports on troubled member institutions; and
- handles the take-over and liquidation of troubled financial institutions, if necessary.[10]

The CDIC's responsibilities also include enhancing consumer awareness about deposit insurance. In part, awareness is enhanced through display of the CDIC membership decal by member institutions, 1-800 telephone lines, membership and information brochures, and a website. During 2003, the Corporation received 245,000 website visits and 13,000 toll-free calls. The Corporation also conducts surveys of public opinion and public awareness campaigns, as well as public and media relations.

[6] Deposits must be in Canadian funds, repayable in Canada, within five years.

[7] Bill C-43, An Act to implement certain provisions of the budget tabled in Parliament on February 23, 2005, increased the limit to $100,000 per insured deposit; upon passage of the bill, the increase was effective as of 23 February 2005. Previously, the limit was $60,000 per insured deposit. The coverage limit was initially set at $20,000 in 1967, and was increased to $60,000 in 1983 in light of failures by financial institutions and declining depositor protection in inflation-adjusted terms.

[8] Credit unions, life insurance companies and brokerage firms are not eligible for membership.

[9] In 1993, the Canada Deposit Insurance Corporation (CDIC) promulgated its Standards of Sound Business and Financial Practices, which describe the measures that constitute sound practices for member institutions, with particular emphasis on enterprise-wide governance and risk management. The Standards were modernized in 2001, and reporting requirements for well-run member institutions were reduced. In light of guidelines developed by the Office of the Superintendent of Financial Institutions (OSFI), in its 2005 *Annual Report* the Corporation recommended that its Standards be repealed to reduce the regulatory burden on member institutions and to eliminate any unnecessary overlap of activity between the CDIC and the OSFI.

[10] The Canada Deposit Insurance Corporation is funded by premiums paid by member institutions. "Member institutions" can include banks, trust and loan companies, and associations governed by the *Cooperative Credit Associations Act* that have applied for and been granted CDIC membership. It has dealt with 43 failures by member institutions since its establishment in 1967; in the course of these failures, it has protected more than $23 billion in insured deposits held by about 2 million Canadians. Between 1967 and 1987, there were 23 failures; since 1987, there have been 20 failures, with the last failure occurring in 1996. In assessing and managing its deposit insurance risk, the Corporation has the power to: set the conditions of membership; control the entry of new members; assess deposit insurance premiums; take early intervention action; and take failure resolution measures, when required.

At present, the Canada Deposit Insurance Corporation – which is funded entirely by premiums paid by member institutions[11] – has $1.3 billion that can be accessed in the event of failure by a member institution. It also has the authority to borrow up to $6 billion from the financial markets or from the federal government should its financial resources be insufficient to fund immediate cash requirements. Following the increase in the insurance limit to $100,000 per insured deposit, as of 30 April 2005 the CDIC had insured more than $425 billion in deposits at 81 member institutions.

Deposits in credit unions and caisses populaires are protected against loss, at least to some extent, by provincial stabilization funds and/or deposit insurance and guarantee corporations.[12]

4. The Department of Finance

The role of the federal Department of Finance with respect to financial institutions – banks, trust and loan companies, insurance companies, credit unions and pension plans – includes:

- developing rules and regulations that govern the institutions in order to ensure that they remain safe and sound, as well as responsive to the needs of consumers;
- ensuring an effective regime to combat money laundering and the financing of terrorism; and
- managing the debt and international reserves of the federal government in conjunction with the Bank of Canada, and providing policy advice on domestic capital market activity.

5. The Competition Bureau

Although it is not formally involved in the regulation of financial institutions and is not a consumer protection agency, the Competition Bureau "seeks to ensure that all Canadians enjoy the benefits of competition, namely competitive prices, product choice and quality services," with the *Competition Act* reflecting the view that a competitive marketplace will result in competitive prices, innovation and quality services. In fulfilling its mandate,

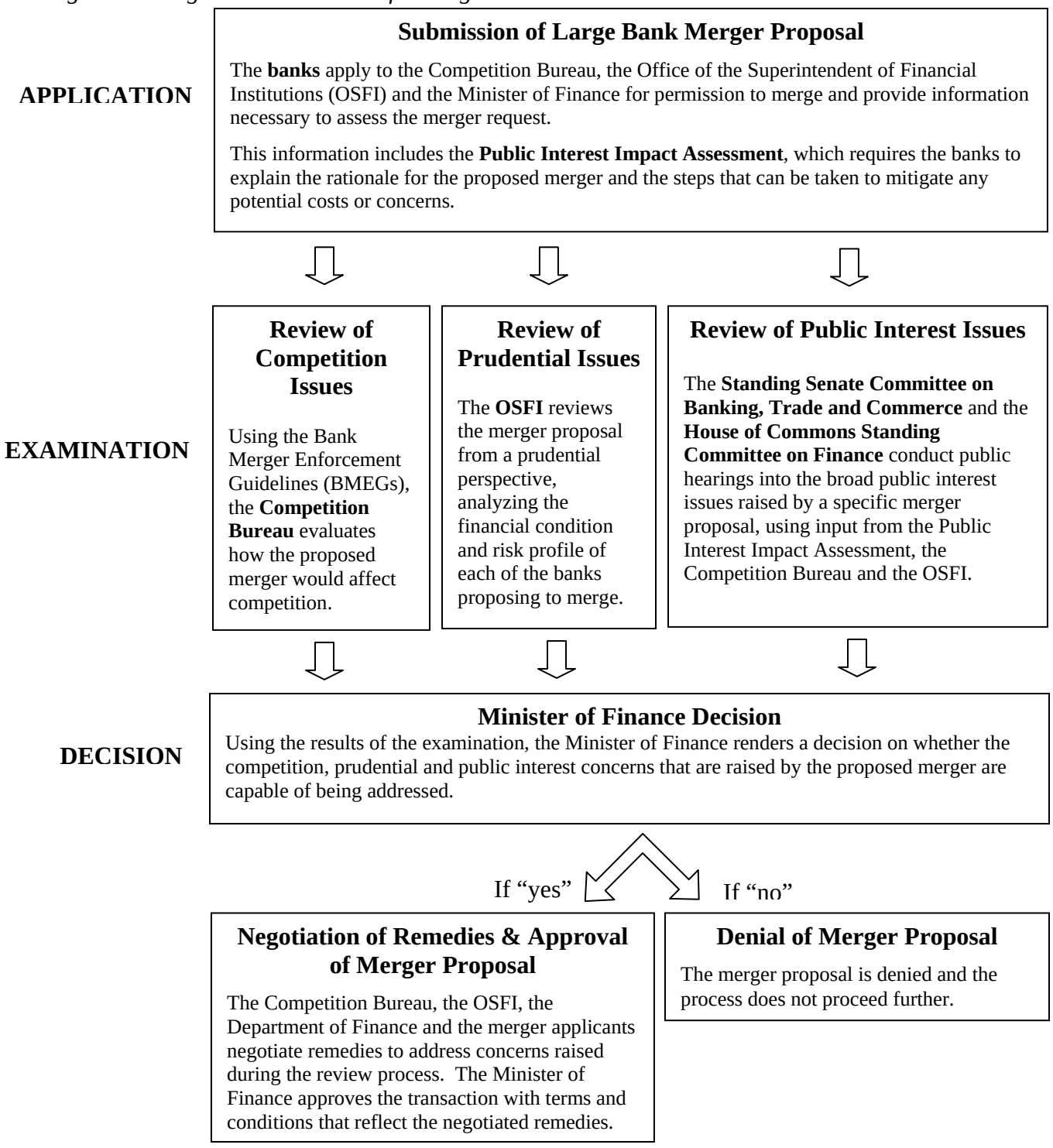
[11] On 28 October 2005, the Canada Deposit Insurance Corporation indicated that no member institution had failed in nine years. It also indicated that premium rates for member institutions would be reduced by one-third for 2005, to the lowest levels ever.

[12] These include: the Credit Union Deposit Insurance Corporation of Prince Edward Island; the Credit Union Deposit Guarantee Corporation of Newfoundland; the Nova Scotia Credit Union Deposit Insurance Corporation; the Québec Deposit Insurance Board; the Deposit Insurance Corporation of Ontario; the Credit Union Guarantee Corporation of Manitoba; the Credit Union Deposit Guarantee Corporation of Saskatchewan; the Credit Union Deposit Guarantee Corporation of Alberta; and the Credit Union Deposit Insurance Corporation of British Columbia. According to the Credit Union Central of Canada, which appeared before the Standing Senate Committee on Banking, Trade and Commerce on 14 April 2005, deposit protection ranges from "$60,000 per individual to an unlimited 100 per cent guarantee in a number of provinces."

the Bureau reviews proposed mergers by financial institutions, and addresses false or misleading representations and deceptive marketing practices.

In particular, the Bureau examines proposed mergers to determine whether the merged entity would substantially lessen competition by raising prices, limiting choice or decreasing service. Unlike mergers of other businesses, mergers between large banks require approval by the Minister of Finance.

Figure 4: Merger Review Process for Large Banks



Source: Prepared by the Library of Parliament based on "Merger Review Guidelines," Department of Finance, available at: www.fin.gc.ca/news01/data/01-014_2e.html.

6. The Bank of Canada

Certain of the responsibilities of the Bank of Canada can affect consumers of financial services. For example, through the setting of monetary policy, interest rates are affected. Moreover, the Bank of Canada bears primary responsibility for the stability of the financial system, which affects consumers.

As well, the Bank is responsible for overseeing payments and other clearing and settlement systems in Canada, which allows it to control systemic risk; that is, spillover effects where the inability of a financial institution to fulfil its payment obligations results in another financial institution being unable to fulfil its obligations, or in the failure of a clearing house.

7. The Office of the Privacy Commissioner

The Office of the Privacy Commissioner oversees two federal laws that protect the privacy rights of Canadians: the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

The *Privacy Act*, which took effect on 1 July 1983, limits the collection, use and disclosure of personal information by approximately 150 federal departments and agencies. Under the Act, Canadians have the right to access and correct their personal information held by these federal organizations.

The *Personal Information Protection and Electronic Documents Act*, which took effect on 1 January 2001, addresses privacy rights and responsibilities in the private sector by setting out rules regarding the collection, use and disclosure of personal information in the course of commercial activities. The scope of parties subject to the Act has evolved since its inception. Initially, the PIPEDA applied to:

- the federally regulated sector, including chartered banks;[13]
- any private-sector business or organization engaged in commercial activity in Canada's territories; and
- any organization transferring information across provincial/territorial borders.

As of 1 January 2002, personal health information collected, used or disclosed by these organizations was also covered. As of 1 January 2004, the PIPEDA applies to all

[13] In addition to the *Personal Information Protection and Electronic Documents Act*, the *Bank Act* contains privacy provisions directed at the use and disclosure of personal information by federally regulated financial institutions. Some provinces/territories have similar provisions in their financial institutions legislation that applies to institutions falling within their jurisdiction (e.g., credit unions and insurance companies).

organizations unless the organization is covered by provincial/territorial legislation that is deemed to be substantially similar to the PIPEDA.[14] As a result, organizations in the retail, manufacturing, resource and service sectors, as well as the entire financial services sector, are now subject to the PIPEDA. The PIPEDA also applies to all personal information in all interprovincial/interterritorial and international transactions by all organizations covered by the Act.

One of the primary functions of the Office of the Privacy Commissioner is to receive and investigate public complaints under the *Privacy Act* or the PIPEDA. As an ombudsperson, the Privacy Commissioner first seeks to resolve disputes through investigation, persuasion, mediation and conciliation. Should these efforts fail, however, a formal process is initiated. In this capacity, the Privacy Commissioner has the power to summon witnesses, administer oaths, receive evidence and enter the premises of organizations.

A report is issued at the conclusion of a formal investigation by the Office of the Privacy Commissioner, and contains the results of the investigation, any settlement reached and/or recommendations to the organization. The Privacy Commissioner does not have the authority to make binding orders or to impose penalties; however, practices of organizations can be made public and matters can also be taken to the Federal Court of Canada.

In addition to addressing specific complaints, the Office of the Privacy Commissioner also conducts audits, reviews or investigations to monitor legislative compliance by federal public-sector and private-sector organizations.[15]

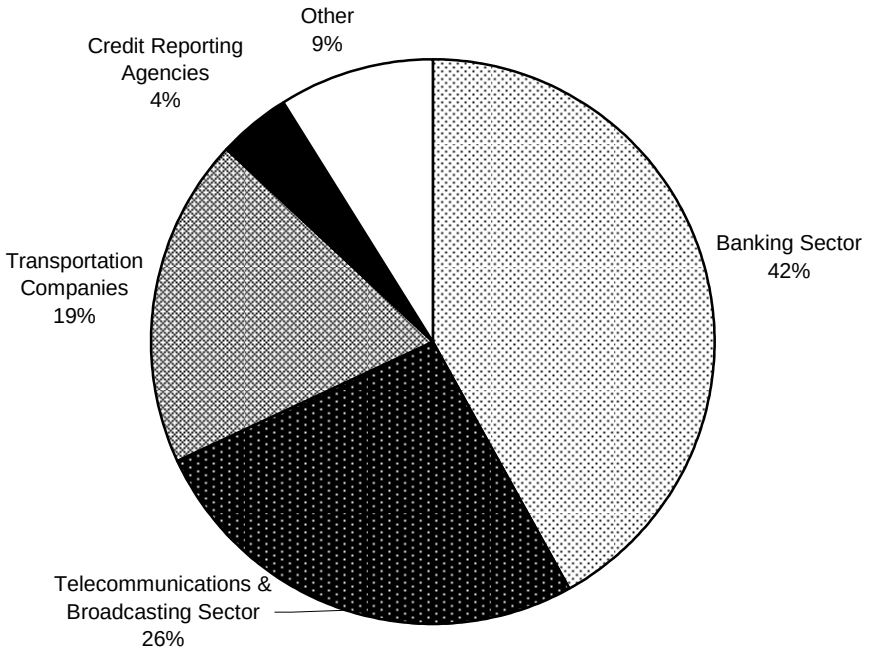
Finally, the Office of the Privacy Commissioner serves as a central repository of information and expertise regarding privacy rights protected by the federal government. In this capacity, the Office:

- advises Parliament on legislation or program initiatives that may affect privacy;
- assists public- and private-sector organizations regarding fair information-handling practices for specific initiatives with privacy implications;
- produces educational materials for individuals and organizations that detail their rights and responsibilities respectively under Canadian privacy legislation; and
- researches ongoing and emerging issues in privacy.

[14] Alberta, British Columbia and Québec currently have legislation that has been deemed to be substantially similar to the *Personal Information Protection and Electronic Documents Act* (PIPEDA). It is important to note that the PIPEDA does not extend to personal information about employees of provincially regulated organizations; privacy protection in this area is left to provincial legislation.

[15] Under the *Privacy Act*, the Privacy Commissioner can initiate a compliance review of federal institutions. Under the *Personal Information Protection and Electronic Documents Act*, the Privacy Commissioner can also audit the compliance of private organizations provided there are "reasonable grounds to believe" that the organization is contravening a provision of the Act.

Figure 5: Complaints Received by the Office of the Privacy Commissioner under the Personal Information Protection and Electronic Documents Act, By Sector, 2003



Notes: "Other" includes rewards programs, internet service providers and Aboriginal band councils.

Source: *Annual Report to Parliament 2003-2004*, Office of the Privacy Commissioner, November 2004, pp. 57-58.

B. The Role of Industry

1. Introduction

In 1998, the federal Task Force on the Future of the Canadian Financial Services Sector – the MacKay Task Force – recommended the creation of a single financial services ombudsman, independent of government and the financial services industry.[16] The federal government's 1999 White Paper[17] on the reform of the financial services sector contained a proposal to consolidate existing independent ombudspersons in the banking, life and health insurance, property and casualty insurance, mutual fund and securities sectors into a single entity providing consumers of financial products and services with

[16] The report of the federal Task Force on the Future of the Canadian Financial Services Sector – the MacKay Task Force – is available at: http://www.fin.gc.ca/taskforce/rpt/report.htm.
[17] Department of Finance, *Reforming Canada's Financial Services Sector: A Framework for the Future*, Ottawa, 25 June 1999, pp. 55-57.

single-window access to complaints resolution and recourse mechanisms against specific financial services providers. In particular, it proposed the creation of a Canadian Financial Services Ombudsman (CFSO) modeled on the then-existing Canadian Banking Ombudsman.

According to the federal government's proposal, the independence of the CFSO would be ensured by a board of directors consisting of eight independent directors and four directors appointed by member financial institutions, each appointed for a three-year term. The Minister of Finance would initially appoint the independent directors, who would – in turn – work with the Minister to develop a process for the selection of new independent directors. While the Department of Finance would not be involved in the day-to-day operations of the CFSO, it would have an ongoing role in ensuring its independent operation.

Moreover, according to the White Paper, the CFSO would be empowered to recommend awards to aggrieved customers, although these recommendations would not be binding on either the customer or the financial institution. Failure to comply with the recommendation would, however, result in the CFSO naming the institution publicly. It would also be required to report annually to the Minister of Finance and to the public.

Bill C-8, An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions, received Royal Assent in June 2001. It contained provisions requiring financial institutions to become members of an industry-wide dispute-resolution mechanism independent of government. In December 2001, the financial services sector proposed a National Financial Services Ombudservice (NFSO) similar to the CFSO proposed in the 1999 White Paper and contained in Bill C-8. The federal government announced in December 2001 that it would support the NFSO initiative, and suspended plans for the CFSO.

2. The Centre for the Financial Services OmbudsNetwork

In November 2002, the Centre for the Financial Services OmbudsNetwork (CFSON) was launched.[18] Governed by an 11-member Board of Directors, with day-to-day operations handled by staff under the direction of the Chief Executive Officer, the OmbudsNetwork is an integrated, nationwide, single-access organization that directs consumers with questions, concerns and complaints about their financial services provider to the industry-level dispute-resolution services of:

- the Ombudsman for Banking Services and Investments;
- the Canadian Life and Health Insurance OmbudService; and

[18] Information on the Centre for the Financial Services OmbudsNetwork (CFSON) is available at: http://www.cfson-crcsf.ca. It should be noted that the CFSON has since been wound up, although consumers can still use the telephone numbers and access the Website.

- the General Insurance OmbudService.

The board of directors of the CFSON, as well as of each of the three ombudservices, has a majority of independent members.

As well, the CFSON provides information and referrals to consumers, and develops and promotes industry-wide standards and best practices regarding financial consumer complaint-handling. Moreover, it develops and implements awareness campaigns to provide consumers of financial services with information about the OmbudsNetwork's activities and services, and provides a forum for ongoing discussions about industry practices and approaches related to various aspects of consumer recourse.

Most financial services providers are members of the OmbudsNetwork's six founding associations:

- the Canadian Bankers Association;
- the Canadian Life and Health Insurance Association;
- the Insurance Bureau of Canada;
- the Investment Dealers Association of Canada;
- the Investment Funds Institute of Canada; and
- the Mutual Fund Dealers Association of Canada.

Figure 6: Complaints Received by the Centre for the Financial Services OmbudsNetwork, By Sector and By Type, 2004

Sector	Nature of Complaints
Banking & Other Deposit-Taking Institutions	1. Savings/Chequing Account – 27% 2. Loans – 27% 3. Credit Cards – 18% 4. Mortgages – 12% 5. Other/Unspecified – 17%
General Insurance	1. Auto – 72% 2. Property – 23% 3. Liability – 3% 4. Other/Unspecified – 2%
Life & Health Insurance	1. Disability – 50% 2. Life – 21% 3. Health – 15% 4. Travel – 7% 5. Investments/Segregated Funds – 4% 6. Other/Unspecified – 2%
Mutual Funds	1. Advice/Suitability – 39% 2. Transactions – 18% 3. Service – 18% 4. Transfers – 13% 5. Rate of Return/Performance – 3% 6. Fees/Commissions – 3% 7. Other/Unspecified – 5%
Securities	1. Advice/Suitability – 40% 2. Service – 29% 3. Transactions – 14% 4. Fees/Commissions – 5% 5. Transfers – 3% 6. Rate of Return/Performance – 1% 7. Other/Unspecified – 7%

Notes: Percentages may not total 100% in each sector due to rounding errors.

Source: Centre for the Financial Services OmbudsNetwork, *2004 Annual Report*, Appendix I, pp. 13-14. Calculations by the Library of Parliament.

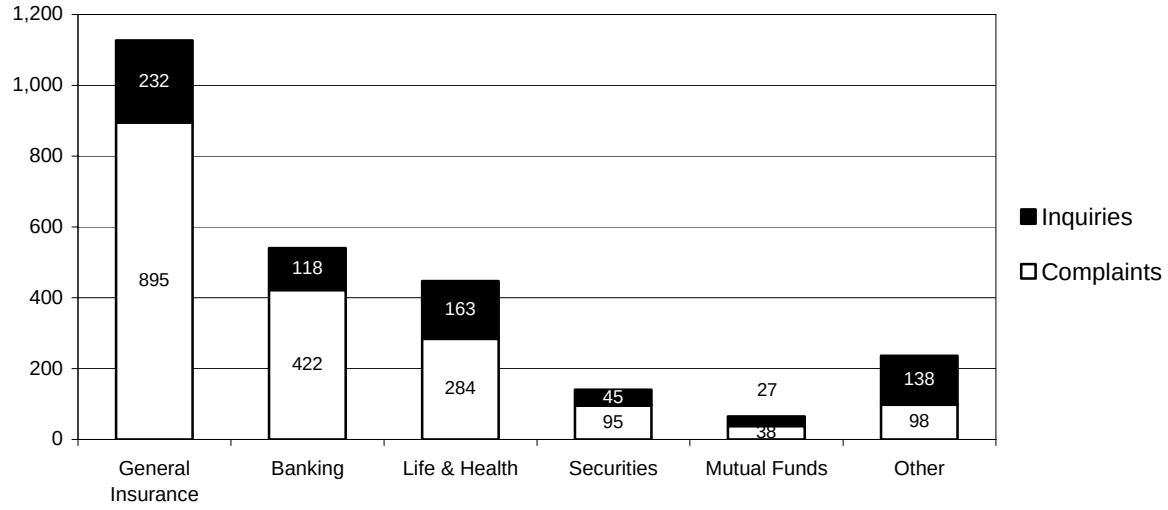
Figure 7: Referral of Complaints by the Centre for the Financial Services OmbudsNetwork, By Point of Referral and By Sector, 2004

	Banking and Other Deposit-Taking	Mutual Funds	Securities	General Insurance	Life and Health Insurance
Company Customer Service/Point of Sale	61	3	8	44	7
Company Managers	54	3	11	75	29
Company Compliance / Complaints Officers / Ombudsmen	141	19	36	299	122
Industry Association Assistance Centres (CLHIA* / IBC)	-	-	-	275	61
Independent OmbudServices (OBSI/GIO/CLHIO)	19	8	28	59	43
Regulators	56	2	4	56	6
Suggested Legal Recourse	9	1	1	17	4
Handled by Centre	30	2	5	41	10
Other	52	-	2	29	2
Total	**422**	**38**	**95**	**895**	**284**

**Note: Effective April 1, 2004, the complaint-handling activity of the CHLIA's Consumer Assistance Centre was transferred to the CLHIO. The bulk of complaints referred to the CAC during the first six months of 2004 were referred prior to April.*

Source: Centre for the Financial Services OmbudsNetwork, *2004 Annual Report*, p. 14.

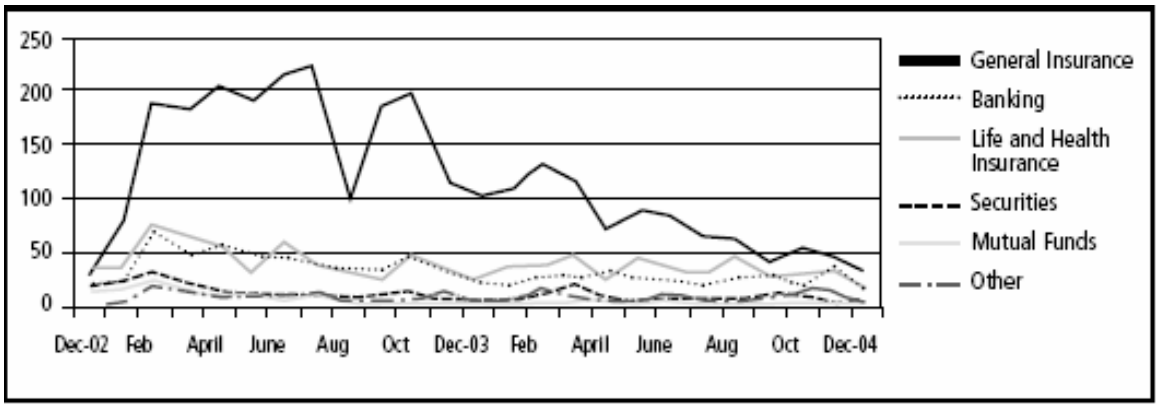
Figure 8: Contacts to the Centre for the Financial Services OmbudsNetwork, By Type and By Sector, 2004



Source: Centre for the Financial Services OmbudsNetwork, *2004 Annual Report*, p. 8.

The costs of the OmbudsNetwork, in excess of what is required by individual sectors for industry-level redress mechanisms, are mainly the start-up costs and its ongoing operating expenses.

Figure 9: Complaints Received by the Centre for the Financial Services OmbudsNetwork, By Sector, 29 November 2002 - 31 December 2004

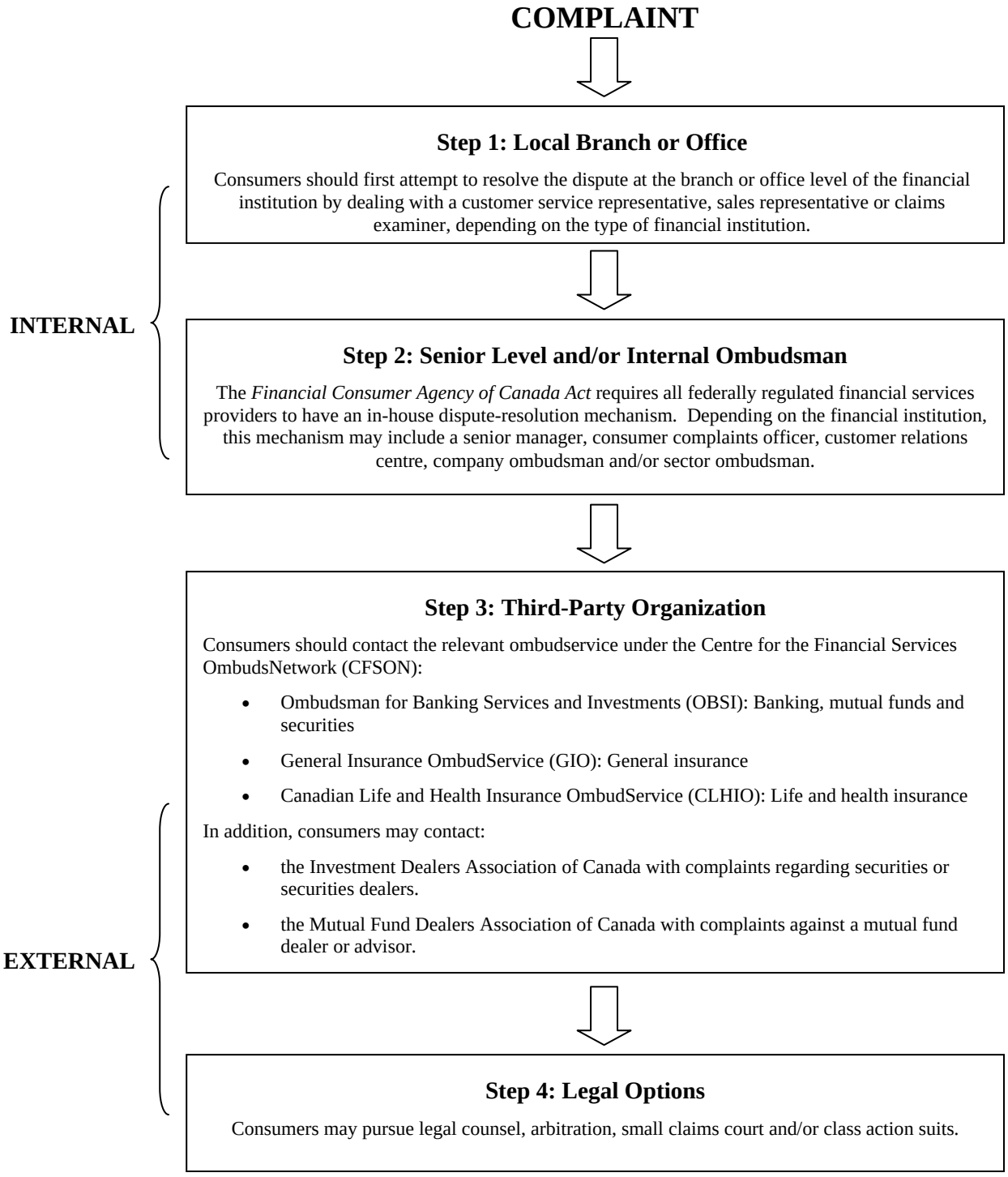


Source: Centre for the Financial Services OmbudsNetwork, *2004 Annual Report*, p. 9.

Funded by the financial services providers, the three industry-level ombudservices provide independent, third-party assistance designed to resolve complaints for consumers whose concerns have not been satisfactorily addressed through the internal-dispute resolution processes of their financial services provider and who wish further consideration.

Following the mediation of complaints, the ombudservices may provide non-binding recommendations, including for restitution or compensation, and will publish instances in which the financial services providers do not accept their recommendations. Where the ombudservice is not able to resolve a complaint satisfactorily, complainants continue to have recourse to the legal system.

Figure 10: Recourse for Consumers with Complaints Regarding Products or Services in the Financial Services Sector



Sources: Centre for the Financial Services OmbudsNetwork and the Financial Consumer Agency of Canada

3. The Ombudsman for Banking Services and Investments

The position of the Ombudsman for Banking Services and Investments – formerly the Canadian Banking Ombudsman – was first established in 1996 to investigate unresolved complaints from small business customers. The mandate was expanded in 1997 to include personal banking customers.

At present, the Ombudsman investigates unresolved complaints from customers of approximately 500 institutions, including: banks; trust and loan companies; other deposit-taking organizations; investment dealers; mutual fund dealers; and mutual fund companies. As well, the Ombudsman offers an outreach program to educate complaint handlers and compliance officers within member institutions, and liaises with regulators to improve the understanding of their respective roles and mandates within the financial services sector.

Customer complaints to the Ombudsman for Banking Services and Investments are assessed on the basis of four criteria:

- overall fairness;
- good business practices;
- accepted industry standards and practices; and
- standards established by industry regulatory bodies, professional associations or individual financial services providers.

At the conclusion of a formal investigation, the Ombudsman for Banking Services and Investments issues a letter to the customer that describes the findings and any non-binding recommendations, including for customer compensation for direct loss, damage or inconvenience of up to $350,000. Member institutions that fail to implement the non-binding recommendations may be publicly reported; to date, no member institution has ever failed to follow the Ombudsman's recommendations. As noted earlier, where the ombudservice is not able to resolve a complaint satisfactorily, complainants continue to have recourse to the courts.

The Ombudsman for Banking Services and Investments does not investigate:

- complaints about the general pricing of products and services;
- complaints about the level of interest rates;
- issues related to general industry policies or procedures;
- credit-granting policies or other risk-management policies or procedures of members; or
- issues that are before the courts, arbitration or other dispute-resolution processes.

Figure 11: Customer Contacts to the Ombudsman for Banking Services and Investments, 1 November 2003 - 31 October 2004

Action Taken / Result	Number of Customer Contacts
Referred customer back to the financial services provider	1,550
Provided information	1,169
Advised customer of other options as complaint fell outside OBSI's mandate	41
Early resolution	135
Investigation	293
Total	**3,188**

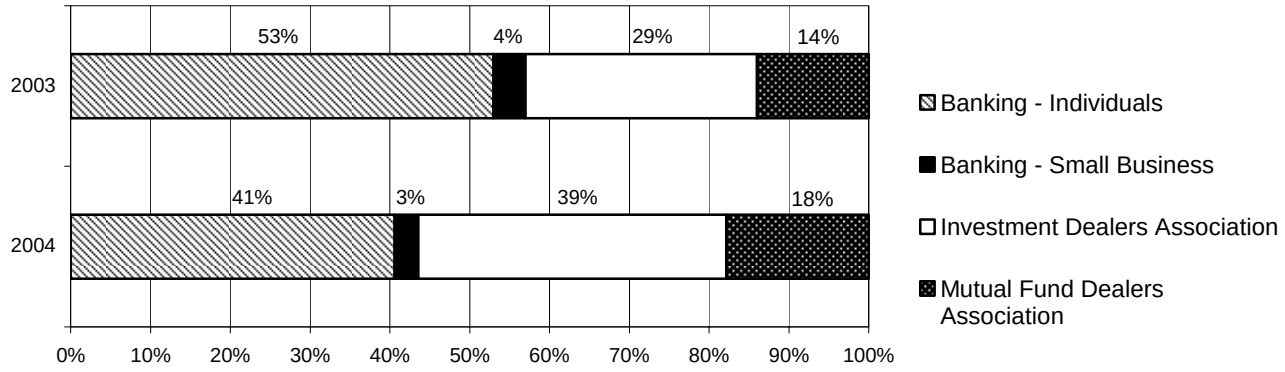
Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Ombudsman for Banking Services and Investments, 10 March 2005.

Figure 12: Investigations and Early Resolutions by the Ombudsman for Banking Services and Investments, Year Ended 31 October

	2004			2003
	Banking	**Investments**	**Total**	**Total**
Open at beginning of year	40	92	132	33
Opened in year				
• Investigations	127	166	293	321
• Early resolution	73	62	135	-
	200	228	428	354
Closed in year				
• Investigations	148	186	334	222
• Early resolution	73	62	135	-
	221	248	469	222
Open at end of year	**19**	**72**	**91**	**132**

Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Ombudsman for Banking Services and Investments, 10 March 2005.

Figure 13: Investigations by the Ombudsman for Banking Services and Investments, By Source, Year Ended 31 October



Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Ombudsman for Banking Services and Investments, 10 March 2005. Compiled by the Library of Parliament.

Figure 14: Investigations by the Ombudsman for Banking Services and Investments, By Type, Year Ended 31 October

	2004		2003
	Number	**%**	**%**
Credit	13	10	22
Fraud	31	24	17
Privacy	4	3	3
Service	31	24	26
Transaction disputes	18	15	16
Other	30	24	16
	127	100	100

Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Ombudsman for Banking Services and Investments, 10 March 2005.

Cooperative credit associations, and trust and loan companies, must belong to a provincial complaints program if the province where they operate has legislation requiring this type of participation. In the absence of a provincial law, these institutions are required to be members of a third-party organization that deals with complaints not satisfactorily resolved at the level of the institution.

4. Credit Reporting Agencies

Credit reporting agencies operating in Canada include TransUnion, Equifax and Northern Credit Bureaus Inc. Using information provided by credit card companies, other lenders and public sources, credit reporting agencies provide a credit profile of consumers based on their repayment record of outstanding debts, and indicate whether consumers repay loans and make payments regularly and on time. Their information assists lenders in determining whether an individual is creditworthy.

The activities of credit reporting agencies are provincially/territorially regulated,[19] and all provinces/territories except New Brunswick and the three territories have consumer credit reporting legislation that governs access to consumer data, the types of data that credit reporting agencies can report and consumers' right to access data kept on them, among other issues. As well, legislation also generally provides that individuals are permitted to access the contents of their credit files and are to be provided with the list of all entities that have recently requested the information.

As well, legislation generally requires credit-granting bodies to advise individuals seeking a loan, credit card or other financing that their credit history will be checked, and to inform a consumer about which agency supplied the report in the event that information from a credit reporting agency is used against him or her. Legislation may also include timeframes for maintaining certain types of information on file.

Federal regulation of credit reporting agencies focuses on the protection of private information collected by them, with the *Personal Information Protection and Electronic Documents Act* (PIPEDA) governing how private-sector organizations collect, use or dispose of personal information in the course of their commercial activities. As noted earlier, if provincial/territorial privacy legislation is substantially similar to federal requirements, the federal government may exempt the province/territory from the federal legislation.[20]

Under the provisions of the PIPEDA, businesses must secure consumer consent to collect, use or dispose of the consumer's personal information, and may only use the data for a purpose consistent with that for which the information was first collected.[21] Where a consumer believes that a credit reporting agency has contravened federal privacy legislation, a complaint should be made to the agency. If the attempt at internal resolution is unsuccessful, the consumer can complain to the federal Privacy Commissioner. If the

[19] Credit reporting agencies that operate in more than one province/territory are subject to the law of the province/territory of residence of the consumer about whom it is reporting.
[20] Québec, British Columbia and Alberta are exempt from federal legislation because of the similarity of their provincial privacy legislation.
[21] With respect to credit reporting agencies, personal information in the credit reporting system is generally reported to the agencies by credit granters or other institutions that are responsible for obtaining consumer consent to do so.

Commissioner's report finds that the complaint has merit, a recommendation will be made to ensure that the breach does not recur. If the credit reporting agency fails to implement the changes contained in the recommendation, the consumer or the Commissioner may apply to the Federal Court for a hearing, and the court can impose changes on the agency.

With the exception of New Brunswick, which does not have credit reporting legislation,[22] provincial legislation allows credit reporting agencies to provide credit reports only for authorized purposes, and information can only be released by them after the written consent of the credit applicant has been obtained; obtaining this consent is the responsibility of the credit granter or other organization making the request to the credit reporting agency for the applicant's credit information, and failure to obtain the required consent from the consumer is a violation of the law.

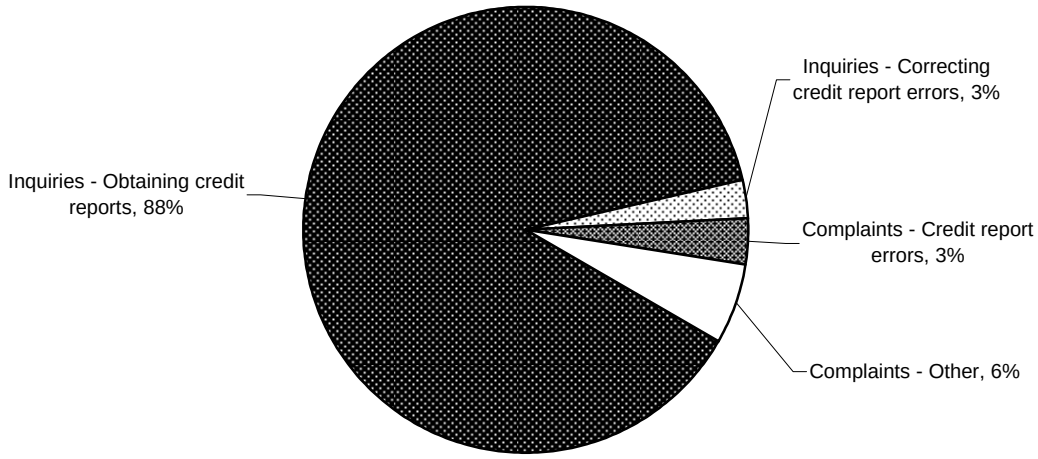
If a consumer advises a credit reporting agency of inaccuracies in his or her credit report, the agency must investigate the inaccuracy within a specified period of time. If the investigation confirms inaccuracies, the agency must remove or correct them. If the investigation is not conclusive, the consumer may add a brief statement explaining the contested information in the credit report. Modifications to the credit report must be communicated to credit inquirers that have requested a report within a specified period.

Where there is a dispute between a consumer and a credit reporting agency that cannot be resolved through internal processes, provincial legislation allows a formal complaint process, usually with a provincial consumer protection agency or ombudsperson.

Finally, some provincial legislation allows consumers to sue the credit reporting agency for damages, if the agency has been found to have contravened the law.

[22] The territories also do not have credit reporting legislation.

Figure 15: Credit Reporting Contacts Received by the Financial Consumer Agency of Canada, 24 July 2003 – 21 February 2005



Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Financial Consumer Agency of Canada, 19 April 2005, Appendix E.

CONSUMER PROTECTION MEASURES: INVESTMENTS

A. The Role of the Federal Government and Its Agencies

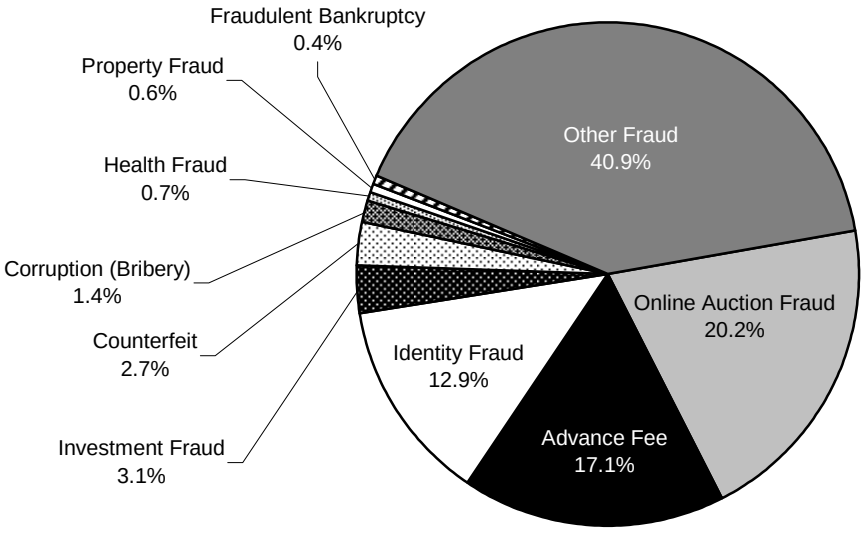
Although provincial/territorial legislation regulates the underwriting, distribution and sale of securities, the federal government protects consumers through: certain provisions in the *Criminal Code*, including those addressing capital market fraud and improper insider trading; activities by such federal departments and agencies as the Royal Canadian Mounted Police (RCMP) and Justice Canada; and the cooperative efforts of the Integrated Management Enforcement Teams (IMETs). Moreover, federal privacy legislation, discussed earlier, protects the personal information of investors.

The IMETs are that aspect of the RCMP's Financial Crime Program dedicated to the investigation and prosecution of serious *Criminal Code* capital market offences that are of national or international significance and that involve actions by publicly traded companies with sufficient market capitalization to pose a genuine threat to investor confidence in Canada's capital markets and economic stability. With an integrated, team-based approach, investigations are likely to be concluded more quickly, thereby bringing more criminals to justice in a more timely manner.

When fully operational, there will be nine IMETs operating in Vancouver, Calgary, Toronto and Montreal, supported by a branch in Ottawa that provides centralized management and accountability mechanisms. The IMETs are comprised of RCMP investigators, lawyers and other investigative experts who work closely with securities regulators, federal and provincial/territorial authorities, and police in local jurisdictions. Liaison may also occur with the Securities and Exchange Commission and the Federal Bureau of Investigation in the United States. A full team is dedicated to each project status investigation that is undertaken.

While members of the public cannot file complaints directly with the IMETs, they can suggest cases or request investigations through their local RCMP Commercial Crime section or through any other police agency of jurisdiction. Alternatively, they can use the RECOL (Reporting Economic Crime Online) Centre website, which was launched by the federal Solicitor General and the RCMP Commissioner in October 2003 and through which economic crimes ranging from credit card fraud to major corporate corruption may be reported.

Figure 16: Complaints Filed with the Reporting Economic Crime Online (RECOL) Centre, By Number, Type and Value, 3 October 2003 - 15 September 2005

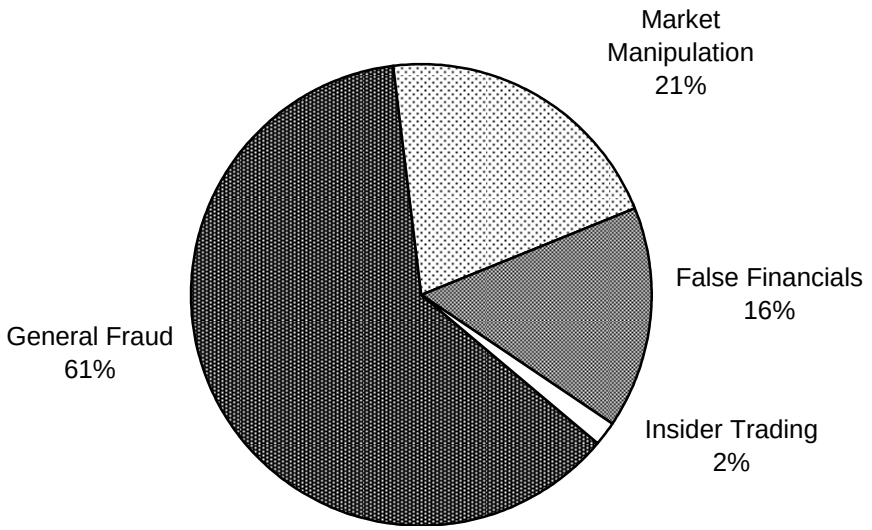


Notes: These figures do not include complaints received for which there was insufficient information for processing, or instances in which the complainant did not allow for the complaint information to be shared.

Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Royal Canadian Mounted Police, 7 October 2005.

Suggestions made by the public, by provincial/territorial securities commissions, by self-regulatory agencies and by other RCMP units, as well as input received through other investigations, are referred to the IMETs, which score the suggestions according to criteria intended to ensure that the most important cases within the mandate of the IMETs receive attention and resources first. The review of some suggestions results in the launch of investigations, and some of these become project status investigations. Cases not investigated by an IMET may be investigated by the RCMP's Commercial Crime section or by local police departments.

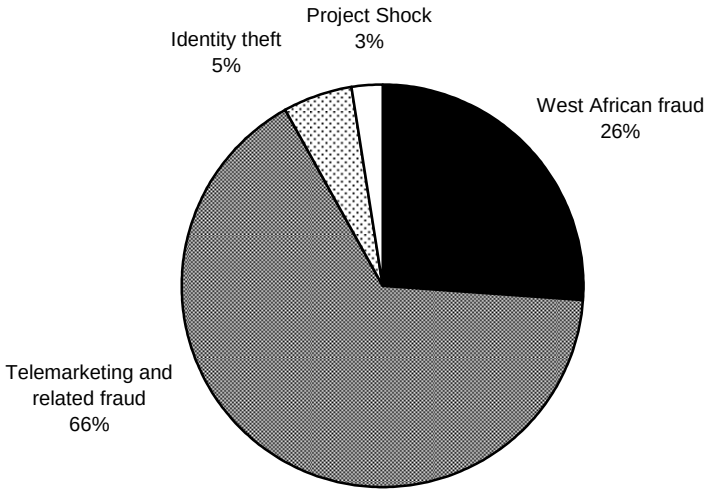
Figure 17: Integrated Management Enforcement Team Files, By Type, 1 January 2004 - 30 May 2005



Notes: Data include 59 investigative files that have been scored by the Integrated Management Enforcement Teams.

Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Royal Canadian Mounted Police, 31 May 2005.

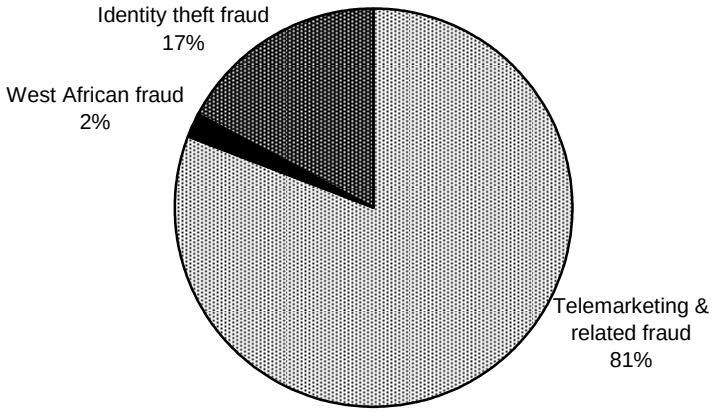
Figure 18: Phone Busters Files, By Type, 2004



Notes: From the 49,682 complaints received in 2004, 920 files were generated by the Analytical Unit, Royal Canadian Mounted Police.

Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Royal Canadian Mounted Police, 31 May 2005.

Figure 19: Phone Busters Complaints, By Type, 1 January 2005 - 30 September 2005



Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Royal Canadian Mounted Police, 7 October 2005.

B. The Role of Industry

As noted earlier, consumer protection regarding investments occurs in part through the Ombudsman for Banking Services and Investments. Should internal dispute-resolution mechanisms fail to resolve an investment-related complaint to the satisfaction of the customer, a complaint can be made to the Ombudsman in accordance with the process described earlier.

In addition, consumer protection is provided through self-regulatory organizations: the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada and Canada's stock exchanges. Moreover, the securities industry is regulated by provincial/territorial securities commissions or administrators and the Canadian Securities Administrators (CSA), which is comprised of provincial/territorial securities commissions and administrators.

1. Securities Commissions

Securities commissions have five basic roles:

- to ensure that investors have the information required to make informed decisions about investment opportunities;
- to establish educational and proficiency standards for salespersons and others who provide investment advice;
- to register the organizations that sell securities or that provide investment advice;
- to ensure that securities firms comply with regulatory requirements; and
- to investigate and enforce rules and regulations in cases where securities laws may have been violated.

Securities commissions delegate certain of their regulatory powers and responsibilities to self-regulatory organizations (SROs), which operate under the oversight of the commissions and both regulate their members and ensure that the members comply with the SRO's rules and securities legislation. This delegation may occur for a variety of reasons, including more frequent compliance examinations and more detailed monitoring of their members than may be possible for securities commissions for time, financial and other reasons. These organizations may impose standards that exceed the minimum set by securities laws.

Self-regulatory organizations regulate markets and trading, member firms, their employees and their business practices by:

- setting standards that registrants must meet prior to employment;
- creating rules governing how markets must operate;
- monitoring and examining member firms on a regular basis, including setting capital requirements to ensure they are solvent and following required rules;
- investigating suspected infractions; and
- employing investigators and compliance officers to ensure the dealers community is meeting required standards.

2. The Mutual Fund Dealers Association of Canada

The Mutual Fund Dealers Association (MFDA) of Canada is a self-regulatory organization for mutual fund dealers in all provinces/territories except Québec. The Association's board of directors is comprised of the President, six public directors – who chair the committees – and six industry directors. Mutual fund dealers are firms that are registered with provincial/territorial securities commissions to distribute mutual funds to Canadian investors through their licensed sales representatives.

Other participants in the mutual fund industry include fund managers, who make investment decisions regarding fund holdings, and mutual fund companies, which

administer funds. The MFDA does not regulate fund managers, investment dealers or mutual fund companies.

As of 1 April 2005, the MFDA had 181 member firms with about 70,000 approved persons representing $244.4 billion in assets under administration, excluding Québec. In most provinces/territories, mutual fund dealers registered with provincial/territorial securities commissions are required to be members of the MFDA.

The MFDA regulates the operations and standards of practice and business conduct of its members with a view to protecting investors and the public interest. The Association conducts regular sales and financial compliance reviews of its members to ensure compliance with its rules, policies and by-laws, and has the power to enforce standards and conduct investigations.

When it became recognized as an SRO, the MFDA was required to establish an investor protection fund for the clients of its members. Effective July 2005, the MFDA's Investor Protection Corporation, which was approved by the securities commissions in Alberta, British Columbia, Nova Scotia and Ontario and by the Financial Services Commission in Saskatchewan, provides limited protection against losses for customers of insolvent mutual fund dealers that are MFDA members. The maximum payment that can be made is $1,000,000.

In general, the MFDA:

- undertakes activities in order to protect investors and preserve market integrity, including admitting members, conducting compliance reviews, and enforcing rules and policies through a disciplinary process that can result in fines, suspension or termination of membership;
- regulates the distribution aspect of the mutual funds industry, thereby regulating how funds are sold;
- undertakes educational initiatives, including training programs; and
- investigates complaints regarding any violation, by its members, of legal and regulatory requirements.

Complaints about a mutual fund dealer or advisor may be made to the MFDA. The MFDA Enforcement Branch investigates complaints made against MFDA members or persons working on their behalf, conducts investigations and imposes disciplinary penalties where there have been breaches of the MFDA's bylaws, rules or policies. Disciplinary penalties include:

- a written reprimand;
- rewriting of licensing courses;
- revision of internal policies;
- fines;

- restrictions when dealing with the public;
- suspension or termination of MFDA membership; or
- a permanent bar from employment with a member of the MFDA.

As well, MFDA members are required to respond to client complaints promptly and fairly, and must report serious complaints to the Association.

As noted above, complaints may be made to the Ombudsman for Banking Services and Investments. The MFDA requires that customers receive information about the Ombudsman when they open an account, and whenever a complaint is made to a member firm.

Figure 20: Enforcement Activities of the Mutual Fund Dealers Association of Canada, 2004

Activity	
Intake matters	683
Opened as cases	298
Escalated to investigation	63
Escalated to litigation	9
Disciplinary action taken:	
• Settlement hearings	1
• Warning letters	59
• Agreements and undertakings	5

Source: Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Mutual Fund Dealers Association of Canada, 14 April 2005, p. 9.

3. The Investment Dealers Association of Canada

The Investment Dealers Association (IDA) of Canada is an SRO that oversees the Canadian securities dealers industry. The IDA's membership includes about 200 investment dealers and their 25,000 registered employees involved in such business lines as commodities trading, corporate finance, discount brokerages, financial planning, insurance, investment banking, portfolio investment management and full service brokerage services.

Many of the IDA's activities mirror those of the Mutual Funds Dealers Association. In particular, the IDA:

- protects investors and ensures the integrity of the marketplace through requirements in such areas as registration, financial compliance, sales compliance, enforcement and regulatory policy;
- fosters fair, competitive and efficient capital markets through acting as a market regulator, public advocate, industry spokesperson and disseminator of information;
- educates member firms through such initiatives as the Canadian Securities Institute and proficiency exams; and
- investigates complaints regarding any violation, by its member firms, of legal and regulatory requirements.

Like customers of MFDA members, clients of IDA members receive limited protection against losses associated with a member's insolvency. Funded through assessments from member firms based on their gross revenue, the Canadian Investor Protection Fund[23] covers eligible customers' losses – to a maximum of $1,000,000 – of securities, cash balances and certain other property resulting from the insolvency of a member firm. The Fund does not cover losses resulting from such other causes as changing market values or unsuitable investments. As of 31 December 2004, the Fund totaled approximately $217 million, as well as a $100 million line of credit provided by two Canadian chartered banks.

Those wishing to make a complaint regarding securities or against a securities dealer may contact the Investment Dealers Association. An investor who believes that he or she has been subject to unfair or improper business conduct can make a complaint to the Association, which may result in an investigation, prosecution and penalty against a member firm or its employees. Restitution for the client is not provided, although the IDA can fine up to $1 million per individual per offence and $5 million per firm. In the most recent three-year period, the IDA conducted 173 disciplinary hearings, fined firms $46 million and individuals $11.4 million, suspended 19 individuals, banned 32 individuals for life and terminated the licences of three firms.

All IDA member firms are required to report client complaints and disciplinary matters against the firm or its registered employees. Moreover, they are required to distribute dispute-resolution information to customers whenever an account is opened or a complaint is received.

Aggrieved investors with disputes up to $100,000 can access the IDA's independent arbitration process; disputes over $100,000 can be arbitrated if both parties agree. The

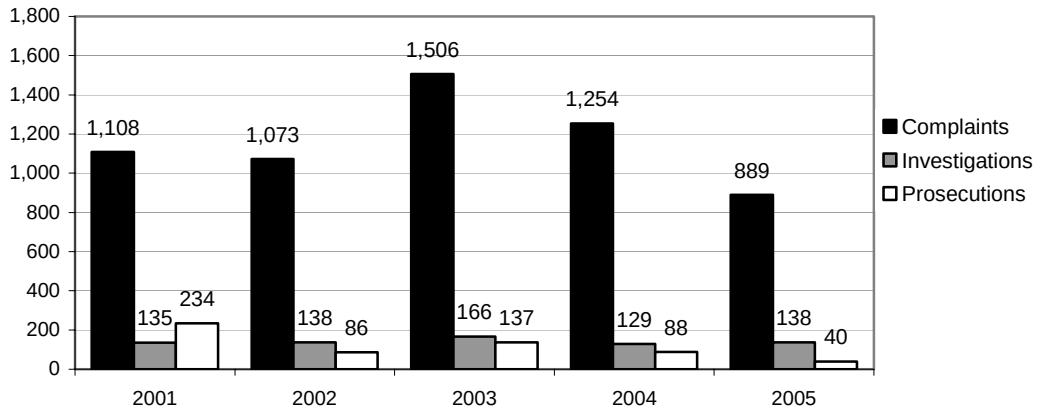
[23] Members of the Toronto Stock Exchange, the Montreal Exchange, the Canadian Venture Exchange and the Investment Dealers Association of Canada financed the Fund.

process, which is typically concluded in three months, has a cost of approximately $3,000 to $4,000, and was initially established for claims that are sufficiently small that recourse to the courts is not economical. In the most recent five-year period, three independent agencies have adjudicated 279 disputes.

The extent to which the IDA arbitration process is used has declined significantly in recent years, with more complaints being addressed by the non-binding service provided by the Ombudsman for Banking Services and Investments, which is available at no cost to the consumer. As well, a mediation service is offered by the Autorité des marchés financiers.

In 2004, the IDA's customer complaint officers responded to inquiries and requests for assistance from about 1,900 investors, and at least 22,000 investors visited the Association's online member firm/registrant information service to determine the type of registration of an individual, the products that he or she is licensed to sell, and whether there are any conditions on the registration, such as a requirement for supervision. Investors can also determine if a firm or an advisor has a disciplinary history with the IDA.

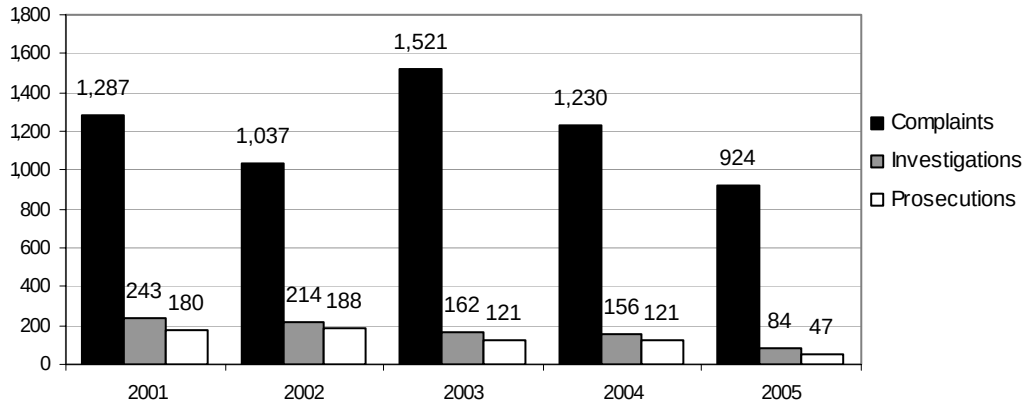
Figure 21: Complaints, Investigations and Prosecutions Received by the Investment Dealers Association of Canada, 2001-2005



Notes: 2005 statistics are for 1 January 2005 - 31 August 2005 only.

Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, 26 September 2005, pp. 4, 7, 9. Compiled by the Library of Parliament.

Figure 22: Complaints, Investigations and Prosecutions Closed by the Investment Dealers Association of Canada, 2001-2005



Notes: 2005 statistics are for 1 January 2005 - 31 August 2005 only.

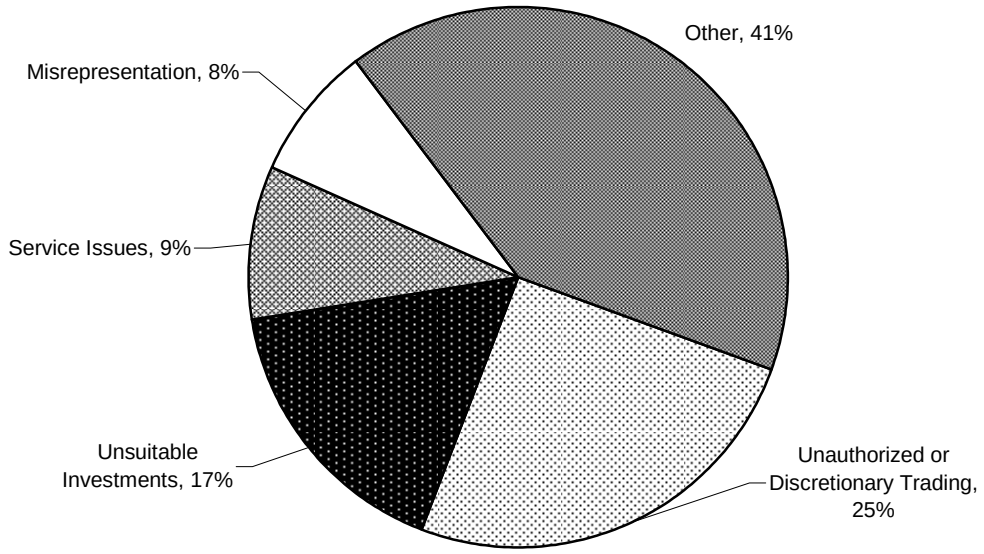
Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, 26 September 2005, pp. 4, 7, 9. Compiled by the Library of Parliament.

Figure 23: Investigations Related to Members of the Investment Dealers Association of Canada, By Type, Year Ended 31 October

	2004		2003
	Number	**%**	**%**
Misrepresentation	5	4	9
Service and other	49	43	21
Suitability/Know Your Client	51	46	52
Trading issues	6	5	15
Transfer of accounts	2	2	3
	113	100	100

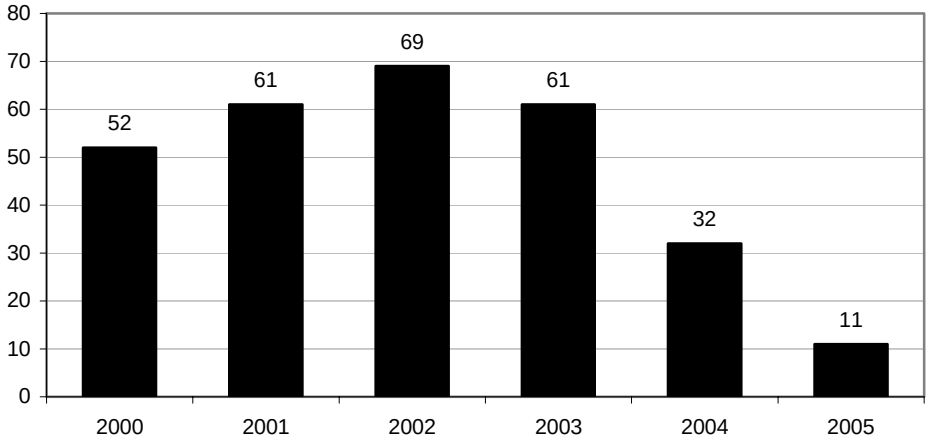
Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Ombudsman for Banking Services and Investments, 10 March 2005.

Figure 24: Complaint Files Received by the Investment Dealers Association of Canada, By Issue, 1 January 2004 - 31 August 2005



Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, 14 April 2005, p. 4; and 26 September 2005, p. 3. Compiled by the Library of Parliament.

Figure 25: Arbitration Cases at the Investment Dealers Association of Canada, 2000-2005



Notes: 2005 figures are for 1 January 2005 - 30 June 2005 only.

Source: Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, 26 September 2005, p. 14.

4. The Investment Funds Institute of Canada

The Investment Funds Institute of Canada (IFIC) is the trade association for the investment fund industry, and advocates regulatory changes that would improve the industry's integrity and efficiency. The Institute's members – which include mutual fund management companies, retail distributors and affiliates from the legal, accounting and other professions – manage assets representing almost 100% of all open-ended mutual funds in the country. In 2004, they managed just over $497 billion in assets in more than 50 million unit holder accounts. As well, in that year, the IFIC's membership included 68 fund management companies sponsoring 1,915 mutual funds, 76 dealer firms selling mutual funds, and 52 affiliates representing law, accounting and other professional firms.

The IFIC's Québec counterpart is the Québec Investment Funds Institute (CIFQ); it represents the Québec mutual fund industry.

The responsibilities of the IFIC and the CIFQ include:

- broadening public awareness and understanding of mutual funds, and providing general information about the industry;
- administering education courses;
- monitoring member compliance with the National Instrument on Sales Communication;
- arranging seminars and conferences;
- distributing literature;
- establishing policy positions on matters of concern and interest to the industry, and advocating these positions with the federal and provincial/territorial government authorities; and
- compiling and disseminating industry statistics.

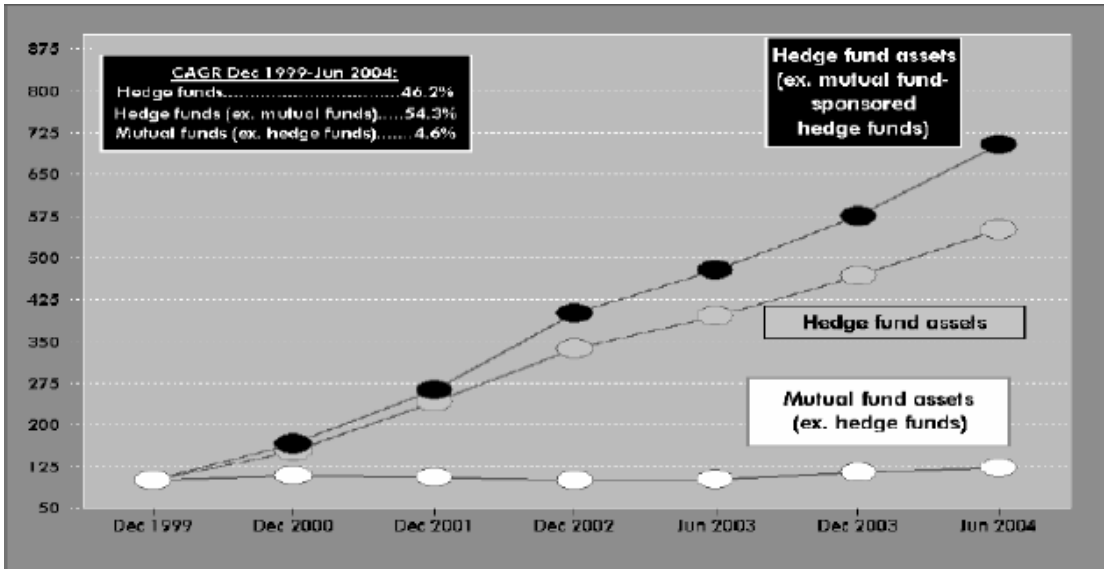
As an industry trade association, the IFIC lacks the authority to investigate and enforce proceedings against its members in complaint situations. The IFIC participated in the establishment of the Centre for the Financial Services OmbudsNetwork.

Figure 26: Investigations Related to Members of the Mutual Fund Dealers Association and the Investment Funds Institute of Canada, By Type, Year Ended 31 October

	2004		2003
	Number	**%**	**%**
Suitability/Know Your Client	21	40	51
Service and other	26	48	28
Trading issues	1	2	7
Misrepresentation	2	4	7
Transfer of accounts	3	6	7
	53	100	100

Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Ombudsman for Banking Services and Investments, 10 March 2005.

Figure 27: Growth of Canadian Hedge Fund and Mutual Fund Assets, December 1999 - June 2004



Notes: December 1999 = 100.

Source: *Regulatory Analysis of Hedge Funds*, Investment Dealers Association of Canada, 18 May 2005, p. 11.

CONSUMER PROTECTION MEASURES: INSURANCE

A. The Role of the Federal Government and Its Agencies

The prudential soundness of the life and health insurance sector is regulated largely by the federal government. The majority of firms in this sector are federally incorporated under the *Insurance Companies Act*, since most operate in more than one province/territory or are subsidiaries of foreign companies. Firms in the life and health insurance sector that operate in only one province/territory may choose to incorporate federally.

A majority of firms in the property and casualty insurance sector are also regulated for prudential purposes by the federal government and are incorporated under the *Insurance Companies Act*. Nevertheless, provinces/territories reserve the right to ensure that federally incorporated insurance companies conducting business in their province/territory are prudentially sound.

The market conduct of all insurers is subject to regulation by the province/territory in which they do business. Moreover, as noted above, the federal Department of Finance plays a role with respect to insurance companies, including the development of rules and regulations that govern the institutions to ensure that they remain safe and sound, as well as responsive to the needs of consumers. Finally, the provisions of the *Personal Information Protection and Electronic Documents Act* apply to insurance companies.

B. The Role of Industry

Like cooperative credit associations, and trust and loan companies, insurance companies must belong to a provincial complaints program if required by the province where they operate. Where there is no legislated requirement in the province in which they operate, insurance companies must belong to a third-party organization that deals with complaints not satisfactorily resolved at the level of the institution.

1. The Canadian Life and Health Insurance OmbudService

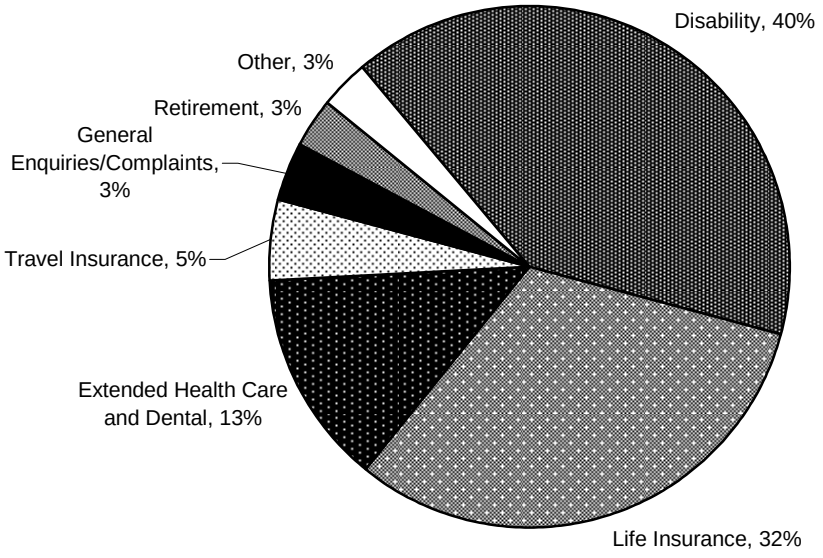
As noted earlier, the Canadian Life and Health Insurance OmbudService (CLHIO) is part of the Centre for the Financial Services OmbudsNetwork.[24] In the event of concerns or complaints about life and health insurance products and services, consumers must first contact their insurance company directly and attempt to resolve the disputed issue; all CLHIO members are required to have a consumer complaints officer. If the consumer and the company are unable to resolve the dispute internally, the customer may contact the CLHIO.

[24] See footnote 18.

Once the OmbudService receives a signed authorization from the complainant, an OmbudService officer will act as an intermediary, and will attempt to resolve the issue through an informal conciliation process. Although concerns and complaints are normally resolved to the satisfaction of all parties during conciliation, in cases where concerns and complaints are unresolved, the CLHIO may make a non-binding recommendation to the complainant and the insurance company. The CLHIO's mandate does not permit it to address complaints that are before the courts, have been taken to binding arbitration or involve breaches of law.

If the complainant does not agree with the CLHIO's recommendation, arbitration or legal action may be pursued. If the insurance company fails to follow a CLHIO recommendation, this fact can be made public. To date, the CLHIO has not had occasion to take this action.

Figure 28: Customer Contacts to the Canadian Life and Health Insurance OmbudService, By Type, 29 November 2002 - 31 January 2005



Notes: "Other" includes Accident & Sickness, Involuntary Job Loss and Critical Illness.

Source: Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Canadian Life and Health Insurance OmbudService, March 2005.

2. The General Insurance OmbudService

The General Insurance OmbudService (GIO), like the Ombudsman for Banking Services and Investments and the Canadian Life and Health Insurance OmbudService, is part of the Centre for the Financial Services OmbudsNetwork.[25] Like the other ombudservices, the GIO is an independent dispute-resolution system, in this instance for disputes involving home, car and business insurance, also known as property and casualty insurance. It functions as a mediation service between insurance companies and consumers where internal dispute-resolution processes have failed to resolve the complaint satisfactorily. The GIO can make non-binding recommendations for settlement, including compensation for losses, and may make public any instances where an insurance company fails to implement its recommendations. To date, this situation has not arisen.

The OmbudService attempts to resolve disputes on claims related to matters of interpretation of policy coverage. It does not address issues regarding:

- insurance product pricing and business decisions;
- settlement procedures established by legislation; or
- matters that have been, or are currently, before the courts.

If the customer has concerns or complaints about a property and casualty insurance product or service, he or she should first approach the Insurance Bureau of Canada (IBC), which attempts to resolve complaints between customers and insurers before they become serious. If the IBC cannot resolve the issue satisfactorily, it will contact the relevant insurance company complaint liaison officer. The customer and the liaison officer will then proceed through the insurance company's formal complaint-handling process, at the end of which the insurance company is expected to clarify how it intends to resolve the complaint.

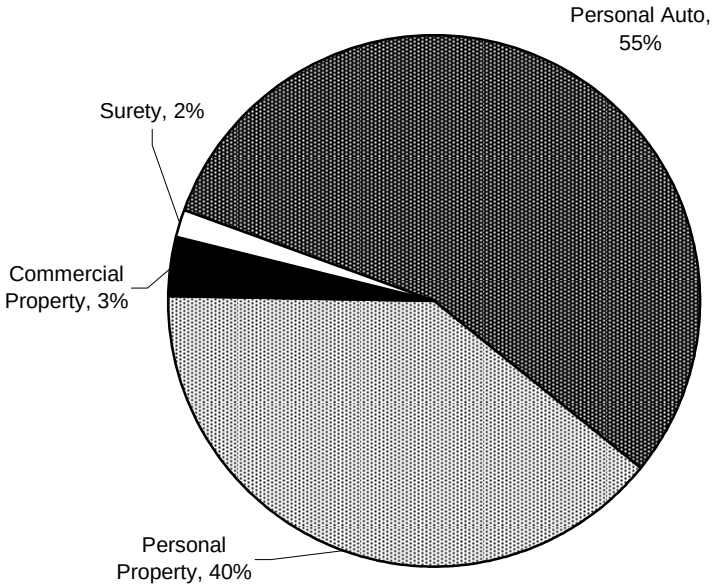
If the customer and the insurance company cannot resolve the complaint and they have exhausted other avenues for recourse, the complainant may contact the GIO. Once the OmbudService receives a signed authorization from the customer, a customer service officer will request that the complainant submit a request for formal mediation. When disputes arise, mediation is undertaken with a view to reaching a solution that is in the best interests of the insurance company and the complainant.

The GIO customer service officer may assist the complainant in selecting an independent mediator from a list provided by the ADR Institute of Canada Inc. or, in Québec, by the Barreau du Québec. Once the necessary documents have been received by the GIO, the mediator will facilitate a 90-minute session between the complainant and the insurance

[25] See footnote 18.

company. If the disagreement persists or mediation cannot resolve all outstanding issues, the mediator will prepare a report with non-binding recommendations.

Figure 29: Mediation Cases with the General Insurance OmbudService, By Type, 1 July 2002 - 31 December 2004



Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, General Insurance OmbudService, 31 March 2005.

3. The Canadian Life and Health Insurance Compensation Corporation

The Canadian Life and Health Insurance Compensation Corporation (CompCorp) is a federally incorporated, industry-funded organization that protects certain Canadian insurance policy holders against the financial failure of their insurance company. Conceptually, it – together with the Property and Casualty Insurance Compensation Corporation discussed below – is the insurance-industry counterpart to the Canada Deposit Insurance Corporation,[26] the Canadian Investor Protection Fund[27] and the Investor Protection Corporation.[28]

[26] The Canada Deposit Insurance Corporation insures eligible deposits, up to $100,000 per insured deposit, in banks, trust and loan companies, and certain cooperative credit associations against loss in the event of failure by a member institution.

[27] The Canadian Investor Protection Fund covers eligible customers' losses – to a maximum of $1,000,000 – of securities, cash balances and certain other property resulting from the insolvency of a member firm. The Fund does not cover losses resulting from such other causes as changing market values or unsuitable investments.

[28] The Investor Protection Corporation provides limited protection against losses for customers of insolvent mutual fund dealers that are MFDA members. The maximum payment that can be made is $1,000,000.

All insurance companies that are licensed to issue life and health insurance policies in Canada are required to become members of the CompCorp. Most fraternal benefit societies, associations and mutual benefit societies are not members of the CompCorp, and some prepaid hospital, medical and dental service organizations are also not required to be members.

The CompCorp engages in the detection of troubled companies and early intervention to protect policy holders. If the financial solvency of a company is such that policy holder benefits are at risk, and if the CompCorp and the regulator are not able to find a solution that would return the company to solvency, the company will be placed under the federal *Winding-Up and Restructuring Act*. The CompCorp will ensure that Canadian policy holders receive the covered benefits under substantially the same terms and conditions originally promised. In most cases, another member company of the CompCorp will quickly assume the policies of the insolvent member.

Benefits covered by the CompCorp may occur in the form of many different products, including:

- life insurance;
- critical illness insurance;
- health expense insurance;
- disability income insurance;
- payout annuities;
- long-term care insurance;
- Registered Retirement Income Funds;
- Registered Retirement Savings Plans;
- segregated funds;
- group insurance; and
- group retirement plans.

Figure 30: CompCorp Coverage of Benefits for Canadian Policy Holders

Type of Benefit***	Value Covered by the CompCorp****
Monthly income	$2,000 per month*
Health expense	$ 60,000*
Death benefit	$200,000*
Cash value	$60,000**
Accumulated value	$60,000**

Notes: * If total benefits exceed this amount, the CompCorp covers 85% of the promised benefits, but not less than this amount.

** If the total amount of cash or accumulated value exceeds $60,000, the CompCorp ensures coverage of at least $60,000.

*** For each type of benefit, there are four categories of coverage: individual benefit, individual registered benefit, group benefit and group registered benefit. Individual benefits accrue to a designated person or several persons designated jointly. Group benefits accrue to persons designated by a group or class. A registered benefit is one that is registered under the *Income Tax Act* (Registered Retirement Savings Plans, Registered Retirement Income Funds, Life Income Funds, Registered Education Savings Plans, etc. for individuals; Registered Pension Plans, Registered Deferred Profit Sharing Plans, etc. for groups).

**** The value of benefits covered is expressed per covered person per member company.

Source: Canadian Life and Health Insurance Compensation Corporation, http://www.compcorp.ca.

In the past century, there have been three life and health insurance company insolvencies in Canada, all of which took place in the 1990s. In all three cases, Canadian policies with these insolvent companies were transferred to solvent member companies, and policy holders retained substantially all of the benefits they were originally promised.[29] On 31 December 2003, the CompCorp paid out the balance of its Liquidation Fund to members,

[29] According to the Canadian Life and Health Insurance Compensation Corporation, almost 3 million Canadian policies valued in excess of $4.5 billion were protected. In all three cases, the policies were transferred to a solvent life insurance company. In two cases, 100% of the policy holder benefits were preserved; in the third case, 96% of policy holders retained 100% of their benefits while the remaining 4% retained at least 90% of their benefits. More generally, when an insolvency occurs, the Corporation sets up hotlines for consumers. It also has a hardship committee for consumers who believe that they are not being dealt with fairly by the liquidator during the transfer of their policy or policies to a solvent company.

since it was satisfied that all significant issues from these insolvencies were resolved and no further recoveries or costs were expected.

In addition to dealing with cases of insolvency, the CompCorp also attempts to minimize the cost of insolvency for members and policy holders by focusing on the early detection of solvency risks. In this regard, the CompCorp works with the Office of the Superintendent of Financial Institutions to monitor member companies. Using information provided by members in their regulatory filings, as well as information that is publicly available, the CompCorp regularly develops reports at the firm and industry level to identify insolvency risks for specific member companies and the systemic risk for the life and health insurance industry more generally.[30]

The CompCorp has about $115 million available to assist in the event of insolvency by a member firm, and can – within 60 days – collect $138 million in regular assessments and almost ten times that amount in terms of a loan assessment against its members.

4. The Property and Casualty Insurance Compensation Corporation

The Property and Casualty Insurance Compensation Corporation (PACICC), like the Canadian Life and Health Insurance Compensation Corporation, is a federally incorporated, industry-funded organization that protects Canadian insurance policy holders in the event of the financial failure of their property and casualty insurance company. Property and casualty insurers licensed in a province/territory of Canada are required to be members of the PACICC, with some exceptions. The following types of insurance are excluded from coverage by the PACICC:[31]

- specialty insurance, such as: aircraft, credit, crop, directors' and officers', employer's liability, certain errors and omissions,[32] fidelity, financial guarantee, marine, mortgage, surety and title;
- automobile insurance in Manitoba and Saskatchewan; and
- insurance for bodily injury arising from automobile accidents occurring in Québec.[33]

Accident and sickness insurance are covered by the PACICC, unless the insurer writes accident and sickness insurance only, or accident and sickness as well as life insurance. In such cases, the Canadian Life and Health Insurance Compensation Corporation provides coverage.

[30] Other organizations also provide insurance rating services.
[31] For more information, see: *Guide to Compensation Plan for Property and Casualty Insurers*, Property and Casualty Insurance Compensation Corporation, available at: www.pacicc.com/english/guidecompplan.htm.
[32] Medical malpractice is not excluded.
[33] In Québec, insurance is available from the Société d'assurance automobile du Québec.

Financial obligations of the PACICC occur pursuant to a formal winding-up order under the federal *Winding-Up and Restructuring Act*. The liquidator responsible for concluding the affairs of the insolvent company processes the claims and determines their value. Where the policy holder disagrees with the amount offered, he or she should attempt to resolve the matter with the liquidator. Should this attempt be unsuccessful, the matter may be brought to court, provided the court's prior approval is received. The PACICC provides compensation to policy holders with eligible policies to ensure that they do not suffer undue financial loss, and only pays claims for which there is an agreement on the value.

Since 1996, the PACICC will also pay 70% of claims for unearned premiums, to a maximum of $700 per policy. Unearned premiums occur when policy holders have prepaid insurance for a set period of time and a winding-up order is made in respect of the insurer during that period.

Figure 31: Property and Casualty Insurance Compensation Corporation Coverage of Benefits for Canadian Policy Holders

Type of Benefit	Value Covered by the PACICC
Unpaid claims for losses arising from a single occurrence	Up to $250,000*
Unearned (unexpired) premiums per policy	70% to a maximum of $700

Notes: * The actual amount to which a particular insured – or third party claiming through the insured – is entitled is determined by first calculating what the aggregate of his or her entitlement is under all applicable provisions of his or her policy or policies (e.g., deductibles, co-insurance, etc.) and then determining the lesser of that amount and $250,000.

Source: Property and Casualty Insurance Compensation Corporation, http://www.pacicc.com/.

The purpose of the PACICC is to provide policy holders with basic compensation; full protection is not provided in all cases. If the liquidator subsequently releases funds for a claim, the PACICC is reimbursed for any prior payment made to the policy holder. Any remaining funds are paid to the policy holder.

Since 1988, there have been 12 insolvency cases in Canada involving property and casualty insurers that were members of the PACICC. As of 30 June 2004, the PACICC had paid approximately $92.8 million in claims to about 100,000 Canadians, and had set aside reserves of $12.4 million to resolve remaining unpaid claims resulting from these insolvencies.

The funds required to settle claims arising from member insolvencies have, in the past, generally been raised through assessments on member companies early in the course of an insolvency based on the maximum anticipated exposure. Assessments are levied against member companies that are licensed in the participating jurisdictions in which the insolvent insurer was writing business.[34] The maximum levy that may be assessed on the industry in any one year is $500 million.

Between 1998 and 2000 inclusive, however, member companies contributed approximately $30 million to a pre-fund, which has increased in value. The existence of the pre-fund provides the PACICC with an additional option for funding claims until it is in a better position to estimate its exposure in an insolvency case. The PACICC also has access to a $10 million bank line of credit, should it be required.

[34] According to the Property and Casualty Insurance Compensation Corporation's *Guide to Compensation Plan for Property and Casualty Insurers*: "The maximum annual levy that an insurer may be asked to pay in a particular jurisdiction is the greater of ¾ of 1% of its direct written premium in that jurisdiction, and its proportionate share in the jurisdiction of $10 million subject to a cap of 1% of its direct written premium in that jurisdiction."

CHAPTER 3:
WHERE WE WANT TO BE: How the Committee Believes Consumers of Financial Services Should be Protected

INTRODUCTION

In its appearance before the Committee, the Department of Finance indicated the three primary goals of financial sector regulation:

- maintain the stability of the financial system;
- provide a framework within which consumers have access to the highest possible standard of quality and service; and
- maintain the integrity of financial markets.

It also identified – as the two key components of the financial service consumer policy – disclosure and competition, which together contribute to attaining the ultimate goal of providing affordable and innovative financial products and services to consumers. Within this context, the Financial Consumer Agency of Canada, the ombudservices and the regulatory framework are the mechanisms used by the federal government to achieve this objective.

According to the Department, with the passage of Bill C-8, An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions, consumers were protected and empowered through:

- the oversight provided by the Financial Consumer Agency of Canada;
- disclosure, including about the cost of borrowing, interest and charges on deposit accounts, cheque-holding policies and complaint-handling processes;
- the redress mechanisms provided by the Centre for the Financial Services OmbudsNetwork and the associated ombudservices;
- such access measures as low-fee accounts, minimum identification requirements and conditions regarding branch closures; and
- accountability mechanisms, such as the annual Public Accountability Statements required for financial institutions with equity exceeding $1 billion.[35]

[35] The regulations regarding these statements require the institution to indicate: the total dollar value of its charitable contributions; the total amount of money authorized for debt financing by size of business; the location of branches and other points of service that have been opened and closed; the number of persons employed and taxes paid; and community development activities. The financial services sector is the only Canadian sector that must meet such a legislative requirement. The statements are monitored by the Financial Consumer Agency of Canada.

In this chapter, the Committee identifies the measures – legislative, regulatory, structural and others – that we believe are needed to enhance consumer protection in the Canadian financial services sector. We make our recommendations bearing in mind that the federal government does not have exclusive jurisdiction in all areas of the sector, and that a key contributor to ensuring a high level of consumer protection and satisfaction is a healthy financial services sector characterized by a high level of competition. In our view, competition results in greater choices for consumers and helps to ensure a range of services offered at a competitive price. This view mirrors that held by a number of our witnesses, including the Canadian Life and Health Insurance Association, which said that "the fundamental consumer protections are competition and financial strength."

The Committee wishes to point out four fundamental facts that became increasingly clear to us during the course of our study. First, the financial services sector is regulated in a manner that is very difficult for the average citizen to understand, with federal regulation and oversight in some areas, provincial/territorial regulation and oversight in others, the involvement of both levels of government in still others, and the choice being given to certain financial services providers in some cases. At the same time, there appear to be elements of the financial services sector that are relatively unregulated by either level of government.

Second, the dispute-resolution processes available to consumers who have a complaint against their financial services provider are perceived by many to be needlessly complex, hard to access and unsatisfactory in their outcome. While this perception may or may not be accurate, until the processes are perceived as simple, easily accessible and fair they will fail to assist consumers of financial services in the manner that they should.

Third, issues are emerging in the financial services sector that require immediate action and/or study, including the emergence and growth of alternative financial services providers and of such investment vehicles and corporate structures as hedge funds and income trusts. Consumers of financial services are well-protected when they have sufficient information about the true costs and benefits of the various options available to them, the risks inherent in the options and the returns that they can expect to realize as a consequence of their actions. This type of clear, easily accessible information enables them to make decisions that meet their needs in the most satisfactory, cost-effective manner possible. It is perhaps the case that insufficient information is currently available about the true cost of the services provided by alternative financial services providers, the options that are available to consumers, and the risks and returns associated with such vehicles and structures as hedge funds and income trusts.

Finally, whether the focus is the ombudservices, the advice provided by financial services professionals or the oversight provided by government departments and agencies, independence – both real and perceived – is a key contributor to consumer confidence and consumer protection. The link between independence on the one hand, and consumer confidence and protection on the other, is true with respect to the financial services sector

and is also true more generally. Independence is increasingly sought by citizens in a full range of activities and endeavours, since it is widely believed that the economy functions better, and citizens are better served, when it is clear that decisions are not self-serving and are made with a view to meeting the needs of the client in the best possible manner, whoever he or she may be.

It is from these perspectives that the Committee makes the following observations and recommendations.

CONSUMER INFORMATION AND EDUCATION

A number of the Committee's witnesses spoke about consumer information and education: the topics about which information and education are currently available; the areas in which more information and education are required; and the manner in which improved consumer information and education could result in better consumer satisfaction and protection.

In its appearance before the Committee, the Financial Consumer Agency of Canada described its dual mandate: to inform Canadians and to protect consumers. From an education – or information – perspective, the Agency indicated that it "ensure(s) that unbiased information is combined with effective market conduct in terms of regulation, to ensure, in essence, that there is confidence by the consumer that they have certain rights to information, et cetera, in that marketplace." We were told that, in its three years of existence, the Agency has experienced a steady increase in demand for its services: "in markets that are changing rapidly, such as in the financial services industry, the need for market conduct oversight and consumer education increases concurrently with the rate of change."

In fulfilling its education mandate, the FCAC partners with other entities, including the National Secretariat on Homelessness to ensure that homeless Canadians have access to basic information educating them about their rights in opening bank accounts. Moreover, it has collaborated with the Canada Revenue Agency in mailing, to millions of Canadians receiving a Goods and Services Tax rebate, an information sheet about the right to a low-cost account.

The Financial Consumer Agency of Canada also works with community groups and such other organizations as Option consommateurs and l'Union des consommateurs, as well as those involved in adult literacy, which – according to the Agency – "is a huge issue … (including) financial literacy." As well, the FCAC has a website with information that allows consumers to compare certain financial products in order to select the provider and product best suited to their needs.

In support of the Financial Consumer Agency of Canada, the Public Interest Advocacy Centre indicated that the Agency "does an important job in monitoring compliance and consumer education" and expressed a wish that the Agency have a stronger public profile and a broader consumer protection mandate. Similarly, Option consommateurs told the Committee that the Agency's "dynamic approach has been much appreciated" and it too would like to see the Agency's "mandate extended and its resources increased."

In some sense, an educational role is also played by the Centre for the Financial Services OmbudsNetwork[36], which described itself to the Committee as "the unique access point for those consumers who do not know where to go when they have a complaint. … [T]he financial services ombudsnetwork in total makes a difference. It acts as a resource … (and) provides consumers with access to specialists. It (also) brings them in contact with those who are best able to resolve their issues and problems within the financial institutions … (and) provides access to independent, third-party redress mechanisms to the ombudservices when all the redress mechanisms in the financial institution have been exhausted."

The Canadian Federation of Independent Business identified the availability of more information as a priority, and told the Committee that "there should be collection and public reporting of additional information specific to the banking sector's competitiveness status. … Notably, (what is needed is) the collection of information on such things as branch locations … (and) the types of services that are available at the banks."

The efforts of the Canadian Foundation for Economic Education to improve the economic and financial literacy of Canadians were brought to the attention of the Committee. This non-profit, non-partisan organization feels that benefits accrue when Canadians are better able to take economic decisions and actions with confidence and competence, and that costs are borne when they lack needed economic and financial knowledge and skills. While the organization believes in the need to assist Canadians of all ages, one of its most significant current activities is "The Building Futures Project," which involves working with provinces that wish to take a strategic approach to improving the economic and financial education provided to youth in schools. The Foundation, like a number of other organizations across Canada, also undertakes a range of other activities and offers a variety of learning resources designed to educate and inform Canadians of all ages and all economic situations about financial matters.

As noted below, a number of the Committee's witnesses identified a particular need for education about financial services providers – including alternative financial services providers – and the cost of their products. Witnesses also said that greater consumer information and education are needed about the ombudservices, the solvency of financial

[36] See footnote 18.

institutions and the nature of the compensation paid to financial services professionals, among others.

This Committee has a long history of supporting greater disclosure of information to, and greater education for, consumers. We believe that enhanced levels of information and education will lead to both better decision making by consumers, since they will have better information with which to make financial services decisions, and greater competition among financial services providers, which will compete with one another for the better-informed consumers. As well, we feel that education about financial issues must begin as early as possible, ideally in public school, and should continue throughout one's life. For this reason, the Committee recommends that:

1. **The federal government, in partnership with provincial/territorial ministries of education, the Financial Consumer Agency of Canada, educational institutions, consumer organizations and other stakeholders, develop a model curriculum to provide education about the full range of consumer issues, including financial matters.**

   In designing the curriculum, consideration should be given to the development of information and education that is:

   - **appropriate to different financial circumstances and situations;**
   - **suitable for delivery by a variety of institutions and agencies; and**
   - **capable of being understood by people throughout their lifetime, beginning at the earliest levels of primary education and continuing throughout post-secondary education and beyond.**

Moreover, the Committee believes that there are a number of federal departments and agencies that are to be commended for their work in informing and educating consumers about a range of issues, including financial services products and prices, and financial institutions. From our perspective, notable in this regard are the efforts of the Financial Consumer Agency of Canada, the Office of the Superintendent of Financial Institutions, the Department of Finance and Industry Canada. We also commend them for the work they do in cooperation with other government departments and agencies, and the private sector.

The Committee also recognizes the efforts undertaken by the financial institutions themselves in educating consumers, including about dispute-resolution processes. We know that mail inserts, publications, websites, trade shows and conferences, among other opportunities, are used by these organizations to inform and educate, and we encourage them to continue – if not increase – their efforts in this regard. For example, we believe that, when a new account is opened – whether with a bank, a trust or loan company, an investment advisor, or an insurance broker or company – a full range of information

should be provided. Notably, this information should include details about dispute resolution and about such other sources of information as the FCAC.

The Committee feels that federal departments and agencies must have sufficient resources to carry out their consumer information and consumer education activities, and that they should monitor that information and education on an ongoing basis to ensure that the needs of consumers continue to be met in the most efficient and effective manner possible. We strongly believe that information and education are key: when consumers are provided with the information that they need, they are able to make financial decisions that best meet their requirements. It is from this perspective that the Committee recommends that:

2. **The federal government increase funding for federal departments and agencies to enable them to carry out better their consumer information and consumer education functions, particularly with respect to the financial services sector.**

   Moreover, in determining the expenses used to calculate the base assessment applied to financial institutions regulated by the Financial Consumer Agency of Canada, the Agency's Commissioner should ensure that the expenses are adequate to enable the Agency to meet the current and anticipated growing demand for its products and services, as well as its mandate.

   Federal departments and agencies, as well as the Financial Consumer Agency of Canada, should evaluate their information and education activities on an ongoing basis to assess the extent to which the needs of consumers continue to be met. Moreover, similar evaluations should be undertaken by an independent entity on a periodic basis. Any changes required as a result of the self- and/or independent evaluations should be made expeditiously.

DISPUTE RESOLUTION

Many of the Committee's witnesses spoke about the current ombudservices: what is working; what is not working; and the extent to which the system is perceived to be impartial.

Option consommateurs told the Committee that "consumers are not very aware of (the complaints review) process and … it does not always function very well. Consumers are leery of mechanisms that are controlled by banks and the process is sometimes very lengthy. The attitude and decisions of the banks' in-house ombudsmen are not always imbued with the necessary impartiality. And even though things may run more smoothly with the (Ombudsman), consumers sometimes tire too quickly … . [T]oo many

consumers come out of those processes so unhappy with the way it worked that it does not give very good publicity to that type of system."

The former Chair of the Ontario Securities Commission also spoke about consumer complaints, and told the Committee that "too often the system that is supposed to address the grievances of investors has been a source of frustration instead. Many investors do not know where to turn. Among many who have the knowledge there is a lack of trust. … We must ensure that the system can respond to investors who have legitimate grievances. We must ensure that investors are able to access the system easily."

In commenting on the May 2005 Investors Town Hall meeting sponsored by the Ontario Securities Commission, the former Chair of the Commission noted that Town Hall participants "heard a strong desire for restitution mechanisms for consumers who suffer a loss because of wrongful actions of market participants … and that investors with a grievance need time to pursue all of their avenues. … Attempting to obtain voluntary redress from a dealer or adviser can consume valuable time. Investors who pursue arbitration must relinquish the option of court action."

In speaking about impartiality and independence concerns, the former Ombudsman for Banking Services and Investments (OBSI) told the Committee that by the time a dispute comes to the Ombudsman's attention, "the financial services provider has studied (it) very thoroughly, has formed an opinion on (it) and has decided that they are not prepared to settle. (Positions are hardened) by the time (the dispute gets to the Ombudsman)." He also said that he "cannot advocate for one party and be seen as independent by the other. (A decision must be rendered) based on fairness in the circumstance and … must be independent of both parties. (The Ombudsman) cannot advocate for the consumer or the industry."

Recognizing that the manner in which the ombudservices are funded by the industry could create a perception of prejudice or bias, the former Ombudsman for Banking Services and Investments remarked that the "OBSI must have a robust governance structure to safeguard the independence" of the ombudservice. The current Ombudsman also commented on this issue, inviting an examination of the ombudservice's "governance structure and … rules that build in important protections for the independence of the office."

The General Insurance OmbudService also noted its independence from the industry and highlighted its "stringent conflict-of-interest guidelines to assure the public that (it) operate(s) independently from the property and casualty industry." Similarly, the Canadian Life and Health Insurance OmbudService noted that it "really (is) completely independent."

In sharing its view that consumers of financial services are well-served by the ombudservices, the Canadian Bankers Association argued that there is "an effective,

efficient and costless redress mechanism" in place. The Association also noted, however, that the process can be simplified: "Does it make sense that the property and casualty insurers and the life and health insurers also be part of one financial services redress mechanism? (The Association's) view has always been, absolutely. … There is a difference in products, but (the system can be set up in a manner that) makes it easy. What would be good for the consumer is one organization. … [T]here would be just one independent board and one phone call."

A similar view was supported by the Canadian Life and Health Insurance Association, which noted that the chairs of the Centre for the Financial Services OmbudsNetwork, the GIO, the CLHIO and the OBSI are working together in the area of integration. The Association said it is "very supportive of the move to greater integration."

As well, the current Ombudsman for Banking Services and Investments indicated that there will be some sharing of facilities by elements of the ombudsnetwork, and recounted an example of a complaint that might benefit from integration: "(The OBSI) had a complaint (from) a consumer who had issues with both segregated funds, which are from the insurance industry, and mutual funds, which fall into (the OBSI's) mandate. (The OBSI) approached the ombudsman for the life and health insurance (industry) and suggested (the two ombudservices attempt to resolve the case) together. That way, (the complainant) sees a seamless investigation, the company receives a seamless investigation and (the complaint can move more quickly), rather than saying, deal with that and then deal with us."

The Department of Finance informed the Committee that, with regard to the ombudservices, "in terms of the day-to-day contact (the Department has) with Canadians, it really does help someone facing a problem. … It is quite effective for them to know about, and it is a relief to give them, an avenue of recourse such as is provided by the ombudservices."

The Committee is reminded of the vision for the ombudservice expressed in the 1998 report of the federal Task Force on the Future of the Canadian Financial Services Sector. The report recommended that the federal government "establish a financial services ombudsman to provide easily accessible, independent dispute resolution to consumers who have complaints." It envisioned a single ombudsman, with mandatory membership for all federally chartered financial institutions and their regulated subsidiaries, with the office structured in a manner that would permit provincially chartered institutions to belong as well; it maintained that a single redress system would reduce consumer confusion.

After recognizing the inevitability of mistakes that will be made given the number of financial transactions that occur daily, and noting that these may occur because of intentional or inadvertent actions, the Task Force report also noted that "[t]he hallmark of a well-functioning system is the way in which it deals with mistakes." Moreover, in

identifying the then-existing Canadian Banking Ombudsman as a good model on which to build, the report identified four principles: accessibility, independence, transparency and efficiency.

The 1999 Department of Finance White Paper, *Reforming Canada's Financial Services Sector: A Framework for the Future*, also addressed the ombudservice issue and committed to working with financial institutions to establish the Canadian Financial Services Ombudsman funded by member institutions. The document envisioned mandatory participation for federally chartered banks, with other federally incorporated financial institutions required to participate in a third-party dispute-resolution system. They, along with provincially incorporated financial services providers, could join the Ombudsman initiative if they desired.

As envisioned in the White Paper, the Ombudsman initiative would operate independently of any financial institution, with a board of directors comprised of a majority of members not representing a financial institution. After the initial appointment of the independent directors by the federal Minister of Finance, the Minister and the incumbent independent directors would select new independent directors.

Non-binding recommendations by the Ombudsman, as well as public disclosure of financial institutions that fail to comply with recommendations, were identified in the White Paper, as were an annual report to the Minister of Finance and the public, and close communication between the Ombudsman and the Financial Consumer Agency of Canada.

Canada now has a number of years of experience with the Centre for the Financial Services OmbudsNetwork and the ombudservices. The Committee believes that the four principles identified in the report of the Task Force have not been fully realized to date, but that they continue to be important principles for the future.

In the Committee's view, accessibility for consumers is enhanced when there is a single redress mechanism for all complaints about financial services sector transactions, with all federally regulated financial institutions required to belong – and provincially chartered and unregulated institutions encouraged to belong – to that mechanism; a single mechanism also enhances simplicity for the consumer. Consequently, when a financial institution's internal dispute-resolution mechanisms fail, the consumer should be able to contact one office – whether by telephone, website, mail or in person – to begin the complaint-resolution process.

In that regard, some concerns of the Committee have been alleviated with the wind-up of the Centre for Financial Services OmbudsNetwork, which we believe occurred – in part – because of our hearings and the evidence presented to us about confusion and duplication in the dispute-resolution process. We are particularly pleased that the streamlining will not involve any loss in protection of, or assistance to, consumers of financial services.

The three ombudservices – the Ombudsman for Banking Services and Investments, the General Insurance OmbudService and the Canadian Life and Health Insurance OmbudService – will assume responsibility for the single-window consumer access to the OmbudsNetwork. The current toll-free numbers and email address will continue to exist as access points, and it is expected that this "de-layering" will result in improved access for consumers to dispute-resolution services. It is our hope that this change in the framework will reduce confusion and frustration for consumers while maintaining all current services and supports.

The Committee is confident that a single mechanism – a single financial services ombudsperson to replace the existing Ombudsman for Banking Services and Investments, the General Insurance OmbudService and the Canadian Life and Health Insurance OmbudService – would better serve and protect consumers, even though the scope of financial services products and services that could serve as the basis of complaints would be quite broad. Moreover, we feel that access to the office of the ombudsperson should – ideally – involve a single access point on a website, where consumers could both initiate a complaint and find a range of useful information. As well, we believe that a video presentation of the steps in the dispute-resolution process would be useful in assisting consumers. Recognizing, however, that not all Canadians can – or have a desire to – access information and a complaint process electronically, access to the ombudsperson should also be available through mail and telephone as well as in person.

A key component of accessibility, the Committee believes, is ensuring that consumers know about the financial services ombudsperson. We encourage strong efforts by all relevant parties to ensure a high degree of visibility for the ombudsperson. In order that cost not be a barrier for consumers, the office of the ombudsperson should continue to be funded by the industry on the basis of assessments determined by the office of the ombudsperson's board of directors, with strong and transparent safeguards to ensure that industry funding of the initiative does not compromise the real or perceived existence of the second principle: independence.

Independence, both real and perceived, continues to be a guiding principle sought by Canadians in many aspects of their life. The Committee believes that, in some instances, the ombudservices have been not been perceived as impartial or independent. While we cannot determine whether this perception reflects reality, we strongly hold the view that it is both the reality of significant independence, and – importantly – the perception of significant independence, that are important. We have, for many years and in many reports, stressed the need for real and perceived independence and for independent directors, and we continue to support these principles.

Consequently, in the Committee's view, the office of the financial services ombudsperson should have a 15-member board of directors: at least 75% of the members should be persons who are both independent of member institutions and are perceived to be so while the remaining members should be selected from among member institution

nominees and should be representative of the full range of financial services providers. In order to be considered "independent," the board nominee should not have worked for, or been significantly involved with, a financial services institution within the previous five years. Incumbent independent directors alone should select independent directors.

Moreover, the Committee believes that the financial services ombudsperson should report directly to Parliament and should appear before relevant Parliamentary committees annually. The board of directors should select the ombudsperson, and he or she should serve at the pleasure of the board of directors; removal should only occur with the consent of 75% of the independent directors. We believe that strong actions to ensure independence will contribute to attainment of the third principle – transparency.

The fourth principle – efficiency – is also, in the Committee's view, an important requirement for the future. We believe that certain actions have been taken that will increase efficiency and lower costs, including reduced overlap between the Canada Deposit Insurance Corporation and the Office of the Superintendent of Financial Institutions. Moreover, comments have been made about better coordination, cooperation and collocation among elements of the ombudservices, and we support those efforts.

While the Committee recognizes these and other actions designed to reduce costs and increase efficiency, we believe that consideration should be given to the advisability of merging the CDIC and the OSFI, bearing in mind that the functions they perform are, to some extent, complementary.

Moreover, the Committee feels that efficiency would be enhanced by the appointment of a financial services ombudsperson providing single-window access to dispute resolution when a financial institution's internal mechanisms fail to resolve an issue satisfactorily. Believing that the arbitration option provided by the Investment Dealers Association of Canada and the mediation available under the General Insurance OmbudService framework do not contribute to simplicity or to efficiency, we believe that these practices should be discontinued once the financial services ombudsperson has been appointed.

The Committee believes that some aspects of the existing ombudservice framework should continue to exist, such as:

- the non-binding nature of recommendations in order to avoid an adversarial process that might deter aggrieved consumers;
- the ability to make recommendations, including for restitution and compensation, in order to ensure that consumers are compensated – at least to some extent – when their case is found to have merit; and
- the ability to make available publicly the names of financial services providers that fail to implement recommendations in order that consumers have more information available when selecting their financial services providers.

In our view, recourse to the courts should continue to be available to complainants, and the current range of issues on which the ombudservice can receive complaints should remain, with one exception: the financial services ombudsperson should be empowered to investigate complaints of instances where financial services providers fail to adhere to their voluntary codes of conduct.

In supporting the four key principles of accessibility, independence, transparency and efficiency, and in support of some of the conclusions reached by us in our 1998 report, *A Blueprint for Change: Response to the Report of the Task Force on the Future of the Canadian Financial Services Sector,* the Committee recommends that:

3. **The federal government, along with provincial/territorial governments, act to ensure the appointment of a Financial Services Ombudsperson in place of the existing Ombudsman for Banking Services and Investments, the General Insurance OmbudService and the Canadian Life and Health Insurance OmbudService. The Ombudsperson, his or her office and the board of directors should respect specified guidelines to ensure independence, transparency, accessibility and efficiency.**

   Regarding independence and transparency, the following guidelines should be respected:

   - **at least 75% of the members of the 15-member board of directors should be independent of participating financial institutions;**
   - **future independent directors should be selected by incumbent independent directors;**
   - **directors who are not independent should be representative of the full range of participating financial institutions;**
   - **the board of directors should select the Ombudsperson;**
   - **the Ombudsperson should serve at the pleasure of the board of directors, with the agreement of 75% of the independent directors required to replace the Ombudsperson; and**
   - **the Ombudsperson should annually report to Parliament and appear before appropriate committees of Parliament.**

   Regarding accessibility, the following guidelines should be respected:

   - **the office should provide a single point of access for consumer complaints regarding any financial service provided by a federally regulated financial institution, and provincially chartered and unregulated financial institutions on a voluntary basis;**

- **consumers should be able to initiate a complaint through a variety of means, including electronically through the office's website, with a video presentation itemizing the steps in the dispute resolution process; and**
- **the complaint resolution processes of the Ombudsperson should be available at no cost to the aggrieved consumer, with the services funded by participating financial institutions in accordance with an assessment rate determined by the board of directors.**

Regarding efficiency, the following guidelines should be respected:

- **complaints should be received by the office following the completion of internal dispute settlement processes within participating financial institutions;**
- **the Ombudsperson should make non-binding recommendations, including for restitution and compensation;**
- **the Ombudsperson should be able to make public any instances where recommendations are not fully implemented by the financial institution; and**
- **aggrieved consumers, as well as financial services providers that must pay restitution pursuant to a recommendation by the Ombudsperson, should have recourse to the courts.**

The Financial Services Ombudsperson should be appointed as soon as practicable but no later than 30 June 2007.

ACCESS TO, AND THE COST OF, CREDIT

The Committee's witnesses spoke about a number of credit-related issues: access; cost; and information to assist consumers in making credit decisions.

A number of witnesses told the Committee that information is readily available to help consumers make informed decisions about financial services products and providers. According to the Department of Finance, "Canadians, with the information and tools created by the Financial Consumer Agency (of Canada), now have at their fingertips the information they need and an array of products to choose from in order to guarantee access to credit under conditions appropriate to the financial situation of each consumer." Moreover, the Department noted that "credit card companies actively compete through low-interest (credit) cards and seek out consumers who are looking to reduce their debt-service levels by moving to a lower-rate card."

Regarding loans to small and medium-sized businesses (SMEs), the Department of Finance commented that authorizations to SMEs – that is, loan amounts authorized by banks and the SME loan provider group – have recently increased. The amount currently requested by those taking out a loan has, however, declined.

In speaking about the spread on loan products,[37] the Canadian Bankers Association informed the Committee that, in Canada, "the spread is particularly tiny. It is at 1.6 per cent. Only Norway is slightly below Canada. … That narrowness of the spread is a good indicator of the degree of competition in the marketplace."

From its perspective, the Canadian Federation of Independent Business (CFIB) commented on the results of a 2003 survey of its membership, which concluded that some major chartered banks have been losing market share in serving the small business sector; this erosion of market share is viewed by some as intentional and as an indication that these major chartered banks may vacate the SME market.

The Canadian Federation of Independent Business also told the Committee that small-sized loan activity[38] has remained relatively stable since the late 1980s, while large-sized loan activity[39] has increased significantly; this change is a source of concern for SMEs, since the majority of small businesses have loans for amounts less than $200,000. In the view of the Federation's membership, small businesses were "abandoned" during the 1990 recession when the large banks called in their lines of credit when restructuring their loan portfolios, and there has been an increase in the rejection rate of small business loan applications by large banks and other institutional lenders. The CFIB informed the Committee that "[i]t is a lot easier to lend out a few million dollars once than to lend out in parcels of many hundreds of thousands."

Nevertheless, the Canadian Bankers Association told the Committee that "the banks approve 80 per cent to 90 per cent of the applications. It is a very competitive marketplace. … They are competing among themselves and among other (financial services) providers."

Moreover, the CFIB 2003 member survey revealed the feeling that, in terms of business client banking relationships, major chartered banks have consistently been "outclassed" by other financial institutions, such as credit unions and other regionally based financial institutions; in the view of survey participants, the performance of chartered banks regarding the servicing of the SME sector may reflect their lack of interest. The survey also concluded that high turnover of account managers within banks has weakened the relationship between banks and SMEs; since banks no longer invest as much in

[37] The spread on loan products is the difference between what a depositor receives and what a borrower pays.
[38] Small-sized loan activity is defined as loans less than $200,000.
[39] Large-sized loan activity is defined as loans exceeding $200,000.

developing long-term relationships with small business owners, they are less able to understand and respond to the specific needs of small business clientele.

Regarding the cost of borrowing, the Credit Union Central of Canada mentioned the efforts of the federal and provincial governments, through Industry Canada's Consumer Measures Committee, to harmonize the cost of borrowing disclosure regulations and practices across all jurisdictions. In the Central's view, harmonized laws ensure that:

- consumers receive fair, accurate, timely and comparable information in order to obtain the most economical credit for their needs;
- disclosure requirements are as clear and simple as possible; and
- consumers who pay off loans early only incur the finance charges accrued up to the time that the loan is paid, with the exception of mortgages.

The Credit Union Central of Canada commented that consumers can only benefit from disclosure if the provisions that apply to financial institutions that are regulated by two levels of government are identical, regardless of regulatory jurisdiction: "If comparison of information is to have value for the consumer, there must be identical disclosure provisions applied to provincial(ly) and federally regulated institutions." The Central recommended that the Committee consider standardization consistent with the provisions in the *Bank Act*, believing that they are fair to consumers and practical to administer.

Option consommateurs indicated to the Committee that it sees a paradox regarding credit: "[O]n the one hand, bankers too easily grant too much credit to already heavily indebted consumers who thus find themselves at the mercy of any hiccup that might arise in their lives such that they will not be able to make their payments. … The processes used by institutions to appraise the ability of a consumer to repay are … weak. At the same time, banks hardly ever grant loans of less than $5,000 … ."

The Committee's focus during the current study did not include an exhaustive examination of the extent to which consumers – whether individuals or businesses – are being granted the credit they are seeking. Nor did the study extend to an in-depth examination of the cost of credit. We did, however, receive testimony that causes us to have some concern. We believe that financial institutions are an integral part of our society and are critically important to the functioning of our economy. Consumers need access to financial institutions in a manner that allows participation in the day-to-day activities of life, and businesses need access in a manner that helps to ensure their – and, ultimately, the nation's – growth and prosperity.

The Committee's previous reports *An Environment for Prosperity: Facilitating the Growth of Small and Medium-Sized Businesses in Canada* and, more recently, *Falling Behind: Answering the Wake-Up Call – What Can Be Done To Improve Canada's Productivity Performance?* noted the importance we place on the ability of Canadian businesses – particularly small and medium-sized businesses – to access reasonably

priced financing. This access is, in our view, critically important in order to assist businesses in meeting the productivity challenges of the future. We also believe that individual consumers require access to credit in order to participate fully in society.

That being said, the Committee believes that financial institutions themselves are best placed to determine the conditions under which they will extend credit. We feel, however, that while they should be cautious in extending credit to consumers who may not be especially credit-worthy, they should not deny credit unnecessarily. Moreover, we believe that they should extend credit to Canadian businesses in a manner that provides them – particularly the small and medium-sized businesses that are the engines of growth in Canada – with the financing needed to grow and prosper. We are reminded of our discussion, in our September 2002 report *An Environment for Prosperity: Facilitating the Growth of Small and Medium-Sized Businesses in Canada*, of the link between SME growth and economic growth. From this perspective, the Committee recommends that:

4. **The federal government study the means by which federally regulated financial institutions may better provide access, by individuals and businesses, to reasonably priced credit. This study should be tabled in Parliament as soon as practicable but no later than 30 June 2007.**

OTHER FEES AND CHARGES

Limited testimony was received by the Committee on a range of other fees and charges by financial institutions: ATM fees; other bank charges; and the need for transparency about fees and charges.

The Public Interest Advocacy Centre was among the witnesses that commented on these issues. According to the Centre, "[t]he fundamental question is: What is the rationale for the increases in bank charges? Banks are moving to an electronic environment where presumably transaction costs decrease as you move from a physical platform – from talking to a teller inside a branch – to an electronic platform. … (As well, ATM) charges have become much more multi-tiered and have just grown." The Centre also commented on the closure of bank branches in some rural communities, and suggested that – in these situations – white label ATMs may be the only alternative available to consumers. In its view, ATMs do not provide the same services as a person at a branch.

In addition to the spread between what deposit-taking institutions pay depositors and what they charge to borrowers, the Canadian Bankers Association described bank fees as the second way in which banks make money from consumers. The Association told the Committee that "Canadian consumers are getting a decent fee package … . During the period of 1996-03, real fees have fallen by 19 per cent. … A study in 2003 by the Public Interest Advocacy Centre shows that 53 per cent of Canadians paid $10 or less per month

for banking services and 24 per cent, mostly seniors, young people and some others, paid nothing at all."

The Committee was also told that the eight largest financial institutions in Canada have an agreement pursuant to which they will offer low-fee accounts with the following attributes:

- no fees on deposits;
- the use of a debit card;
- monthly fees of $4 or less; and
- 8 to 15 debit transactions per month, of which at least 2 can be used within the branch.

According to the Canadian Federation of Independent Business, "fee-based income is a real, growing source of money. The principle of charging fees is perfectly legitimate and defensible, but (banks should) be transparent. … There should be, at least, information and also negotiation … ."

Although the Association was not speaking specifically of fees and charges but rather in the context of the extent to which banking is now technology-based for many consumers, the Canadian Bankers Association told the Committee that the six big Canadian banks spend about $4 billion each year on technology.

Like access to – and the cost of – credit, financial services fees were not an issue that the Committee studied in any comprehensive manner. A review of these fees could, however, be included in the federal government's study of access to credit recommended above. In general, we believe that the financial services environment is fairly competitive, and that information is readily available to assist consumers in making financial services decisions. In particular, we are aware of the services of the Financial Consumer Agency of Canada that enable consumers to determine – quickly and conveniently – the financial services provider, and the fee package, that will best meet their needs. Nevertheless, we feel that efforts to ensure that consumers can access the information needed to make the best financial services decisions must be ongoing. For this reason, the Committee recommends that:

5. The Financial Consumer Agency of Canada regularly review its information designed to assist consumers in making decisions about financial services providers, fees and products. The Agency should ensure that this information is user-friendly, readily available and accessible in a variety of formats.

CONCERNS RELATED TO BANK ACCOUNTS AND CHEQUE CASHING

During the Committee's study, concerns were raised about bank accounts and the cashing of cheques: the circumstances under which an account may be denied; the requirements that must be met in order to open an account; and rules related to the cashing of cheques.

The Committee was informed that, in general, banks must open an account and cash certain federal cheques with basic identification, unless fraud is suspected. Moreover, neither employment nor a minimum deposit is required in order to open an account, and poor credit history and bankruptcy are not valid reasons for refusal to open an account.

As indicated to the Committee by the Canadian Bankers Association, "cheques are legally an instruction from a depositor to pay funds from the depositor's account to the person named on the face of the cheque. Banks have a responsibility to ensure that the intended person receives the funds and for that reason they must make proper efforts to identify persons cashing or depositing cheques." That being said, there are requirements to cash federal cheques of up to $1,500 without charge provided proper identification is presented, even if the presenter is not a customer of that bank. Where the presenter is a customer, the bank's policy may require that the cheque first be deposited into the customer's account.

The Committee was informed by the Financial Consumer Agency of Canada that "[i]f a bank refuses to open an account or to cash a cheque they must provide the customer with a written notice of refusal, including information on how to contact FCAC if they would like to complain." The Agency indicated that, based on "mystery shopping" results released on 26 October 2005, "an overwhelming majority of banks are not providing consumers with written notices of refusal. … [O]nly approximately one out of every 11 consumers (was) given a written notice of refusal."

Regarding cheque holds, the Financial Consumer Agency of Canada indicated that, according to the Cheque Holding Policy Disclosure Regulations, "financial institutions must disclose their cheque holding policy to consumers in writing when an account is opened, or upon request. … If a bank changes (its) … policy, (it) must disclose the changes to every customer in whose name a personal deposit account is kept with the bank."

The Canadian Payments Association told the Committee that it has two main functions in relation to the cashing of cheques:

- establishing the rules that govern the daily exchange and settlement of cheques between financial institutions; and

- operating an information system that tracks the volume and value of electronic and paper payment items exchanged between financial institutions on a daily basis and determining the balances due to – and from – financial institutions as a consequence of these exchanges.

The Association indicated that "[t]he actual exchange of the cheques occurs directly between financial institutions; approximately five million cheques are exchanged each business day, with the total value averaging $11.4 billion."

The Committee supports the federal Access to Basic Banking Regulations, which have been in effect since September 2003. We also support the Cheque Holding Policy Disclosure Regulations. In our view, it is vitally important that all Canadians – but particularly those who may be disadvantaged – have access to basic banking services. We believe that banks should be obliged to open accounts subject to minimal restrictions, and to cash federal cheques of a certain amount with basic identification for individuals who are not customers of that bank. We also feel that the current reasons for refusal to open an account are valid.

Certain concerns remain, however, about cheques. The Committee believes that electronic cheque imaging will greatly expedite the process, thereby better meeting the needs of consumers. We are aware that the Canadian Payments Association is leading an industry-wide initiative to adopt a new clearing process based on cheque images, and that full national implementation of the cheque imaging initiative is expected to be complete in 2009. As well, we know that the Association is discussing legislative amendments to the *Bills of Exchange Act* with the Department of Finance. This statute has remained largely unchanged for more than a century and, for this reason, the Committee recommends that:

6. The federal government, on a priority basis, give appropriate legislative action to the changes to the *Bills of Exchange Act* proposed by the Canadian Payments Association.

BRANCH BANKING

The Committee's witnesses commented on a number of issues related to branch banking: the extent to which bank branches are closing; the manner in which the substitutes for branch banking are failing to meet the needs of some consumers; and the role played by other financial institutions – notably, credit unions – when bank branches close.

In its appearance before the Committee, the Department of Finance supported the current regulatory framework requiring notice before branch closures and the possibility of a meeting with the financial institution before the closure takes effect. In particular, a minimum notice period of four months is required to close a branch, with – in rural areas – a six-month notice requirement prior to closing the last branch within a ten-kilometre radius. As well, the Commissioner of the Financial Consumer Agency of Canada may require that the bank hold a meeting with the affected community prior to a branch closure.

The Department of Finance also noted that "[t]here have been a number of transactions … in which smaller banks and credit unions have … picked up a significant number of branches from the larger banks. … There have been new entrants. … [S]ince Bill C-8 was created, there have been a number of new entrants … . Some very small institutions have been created (in Western Canada). Some of the large commercial companies in Canada have also formed banks for the purpose of delivering the financial service that they wish to provide to their clients in conjunction with their commercial activities."

The Department of Finance also indicated that "it is not only the actual new entry that counts, it is the threat of new entry and the impact that has on the pricing and product decisions of existing players in the market. A number of new products have been introduced by the large banks in response to some product innovations that were brought in by some of the smaller entrants. Just looking at the market share of those smaller entrants would tend to underestimate the impact on the marketplace of the possibility of new entrants."

According to a 2003 survey of its membership, the Canadian Federation of Independent Business identified a need for full-service local bank branches for small and medium-sized businesses. In the view of the Federation's membership, alternative banking methods – ATMs, telephone banking and Internet banking – are not acceptable substitutes, since they do not provide the full range of basic banking services, such as financing and cash management.

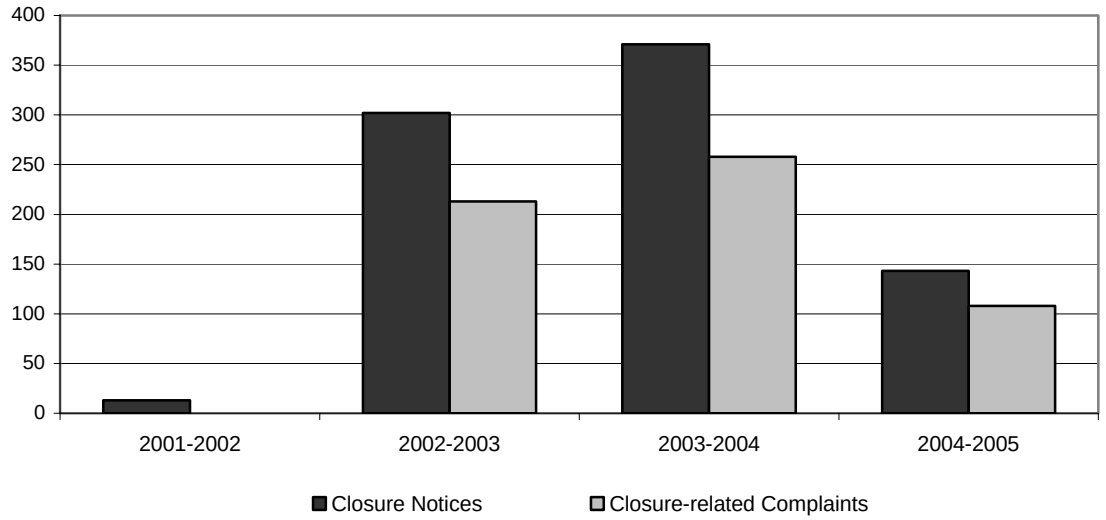
In particular, the Canadian Federation of Independent Business told the Committee that technology is not "a perfect replacement for the full-service local branch. … [W]e have lost that personal contact which is very important to a small business member. … (Moreover), the higher the rate of account manager turnover in the institution, the higher

the loan rejection rate. … [I]t really is very dramatic – from almost one-third being rejected when they have four or more account managers over a three-year period versus 11 per cent … when they actually had the same account managers. … Also, the smaller the business, the higher the loan rejection rate is."

Commenting on the issue of technology and banking, the Canadian Bankers Association informed the Committee about the dramatic growth in the extent to which Canadians conduct Internet banking: the rate today is 24%, up from 8% three years ago. According to the Association, "there has been a change in the way in which Canadians do their banking. It is all technology-based."

The Canadian Federation of Independent Business also spoke about access in non-urban areas, telling the Committee that, in the rural areas, it has found that "the impact has been quite staggering in terms of reduction in availability of credit-granting institutions." Overall, its members are "relying less and less on the so-called traditional financial institutions."

Figure 32: Branch Closure Notices and Closure-related Complaints Filed with the Financial Consumer Agency of Canada, 2001-2002 to 2004-2005



Notes: Because the Financial Consumer Agency of Canada began operating in 2001, fiscal year 2001-2002 is for the period 24 October 2001 to 31 March 2002 only. Closure-related complaints were not published in the Financial Consumer Agency of Canada's *Annual Report* for this period.

Source: Subsequent Submission to the Standing Senate Committee on Banking, Trade and Commerce Regarding Consumer Issues Arising in the Financial Services Sector, Financial Consumer Agency of Canada, 16 September 2005.

The Credit Union Central of Canada informed the Committee that credit unions serve the consumer market, and have a "rapidly growing presence in the small- and medium-sized

lending market. … (Credit unions) are the second largest lender behind the Royal Bank in terms of the SME market."

The Credit Union Central of Canada also indicated that credit unions are committed to their communities, as evidenced by their efforts to purchase bank branches that have been divested: "Since 2000, (credit unions) have purchased 72 bank branches: 14 in British Columbia, 21 in Alberta, 17 in Saskatchewan, 16 in Manitoba, 2 in New Brunswick and 2 in Nova Scotia. … In Ontario, credit unions are not as robust . … Ontario is where competition is fiercest with the banks."

Moreover, the Credit Union Central of Canada said that "the presence of credit unions and caisses populaires (has) provided a robust level of service and an alternative to chartered banks" and noted the extent to which credit unions have stability in account managers and branch managers: "[I]f you walk in and you are a small businessperson, you do not deal with an agent; you deal with a member who is probably part of the credit committee. If you have a unique problem, they can tailor that solution for you."

The Public Interest Advocacy Centre told the Committee that "people with less income find that they have much more need of in-branch banking, talking to people inside banks, because they have no ability to access particularly the Internet environment." In the Centre's view, this requirement may be related to the use of the payday loan sector, or alternative financial services. The Centre also suggested that "[i]n many rural places, branch banking disappears and white label ATM is the only alternative. … [A]n ATM cannot replace a number of services that you need to do in person at a bank."

Option consommateurs shared its view that cooperatives may not fill the vacancy created by bank branch closures: "As for the possibility of the cooperative movement (in some way) substituting itself for the banks in a merger scenario, one must remember … that in Quebec that was not a very common occurrence, even if there were bank branch closures."

The Committee is aware of – and supports – the requirements that currently exist regarding bank branch closures. We believe that branches should not be required to remain open if it is not profitable for the financial institution, but feel that consultation with the community prior to closure is a valid requirement. While we recognize that the result of a branch closure may be inconvenience and the end of a relationship between the consumer and the financial institution – and that the impact may be greater in non-urban areas – we, nevertheless, support the current approach. We know that the nature of banking is changing for a many Canadians, with an increased focus on electronic banking. We appreciate the substantial costs incurred by financial institutions in providing electronic services, and realize that these costs may mean that some branches must be closed.

In our December 2002 report, *Competition in the Public Interest: Large Bank Mergers in Canada*, the Committee commented on the need to review barriers to entry into the financial services sector and to take actions that would foster competition. We believe that other financial services providers – including credit unions – would welcome the opportunity to acquire branches that are closed, provided that the incentives and the environment are such that they would grow and prosper as the result of acquiring closed branches. It is from this perspective, and consistent with our view in our December 2002 report, that the Committee recommends that:

7. **The federal government, with a view to enhancing competition, undertake a comprehensive review of the barriers to entry into the financial services sector for both domestic and international competitors.**

   The government should then act expeditiously to remove any unnecessary barriers.

   A report on actions to be taken in this regard should be tabled in Parliament as soon as practicable but no later than 30 June 2007.

CONTRACT LANGUAGE

While a limited number of the Committee's witnesses discussed the issue of contract language, those that did focused on: the need for clarity; the need for brevity; and the need for ongoing efforts to ensure both of these.

The Department of Finance shared with the Committee its view that, while financial services contracts are complicated, the cost-of-borrowing regulations contain a requirement that contracts be drafted in plain language. This requirement is monitored by the Financial Consumer Agency of Canada.

In some sense, the Investment Funds Institute of Canada also spoke about "plain language" when it mentioned the Canadian Securities Administrators' registration reform project and an account-opening working group that is proposing a new form to be used when a customer opens an account. The Institute said that it "remain(s) vigilant that the document not be long and confusing."

Similarly, in speaking about prospectuses, the Investment Dealers Association of Canada suggested that "[a] plain language initiative is really important." In the Association's view, "because of the rules and because of a mind set, as long as you can get it on paper, you are fulfilling your disclosure obligation. The dirty little secret is that most people do not read prospectuses and even fewer can understand them. … [Y]ou could take a 150-page document and in two-and-a-half pages, give people 98 per cent of what they need."

In recognizing that plain language contracts may be desired by consumers, the Canadian Life and Health Insurance Association said that "[t]here is no doubt that clarity and understandability (are) a challenge. We have been working on that, but we will never achieve perfection."

The current Ombudsman for Banking Services and Investments commented that the OBSI "can only echo the call for plain language … for consumers. … [A]ll players in the field of financial services could do more to make sure consumers understand their rights – and responsibilities – through the use of clear, straightforward and accessible language in account documentation and product information. … We cannot oversimplify the complex, but we need to be plain and concise."

Finally, the Department told the Committee that, after Bill C-8 became law, "some progress (was made) on some of the plain language model-alone contract documents, for example, in the area of mortgages, credit card applications and credit card agreements. … Some of these contracts are more complicated than others, and some are more difficult to render into plain English."

In the Committee's view, clear and concise contract language is an absolute requirement if consumers are going to make the best possible financial services decisions. While we recognize the Department of Finance's assertion that some progress has been made, we believe that much remains to be done, and as soon as possible. We are aware of the Truth in Lending Act and the Fair Credit Reporting Act in the United States which, along with other statutes, require clear, conspicuous, accurate or understandable language in many consumer transactions, and believe that these statutes – as well as similar initiatives within individual states – could provide a useful model for Canada. It is for this reason that the Committee recommends that:

8. The Department of Finance, on a priority basis, meet with financial institutions to renew efforts to ensure clear, simple and concise financial services contract documents.

The federal government should table a report in Parliament, as soon as practicable but no later than 30 June 2007, on the extent to which contract documents have been clarified and simplified.

ALTERNATIVE FINANCIAL SERVICES PROVIDERS

The Committee received testimony on the issue of alternative financial services providers: their growth; their relative lack of regulation; and their customers.

A number of witnesses, including the Department of Finance, told the Committee that payday lending organizations are not federally regulated. Discussions are occurring, however, between federal and provincial governments about the emergence and development of the payday lending sector. The Department indicated that the principal federal law in these situations is the *Criminal Code*, which defines the criminal interest rate.

The Competition Bureau remarked that while payday loan operations are under provincial jurisdiction, "[t]o the extent that there (is) any false or misleading advertising in a material respect, that might be something (the Competition Bureau) would look at, but (the Bureau is) not aware of any complaints to (it) in this particular area."

The Centre for the Financial Services OmbudsNetwork told the Committee that it has "had one or two complaints, perhaps, at the most in respect of payday loans. … [P]eople have not complained about their relationship with payday loan groups… ."

According to some witnesses, education could reduce the extent to which consumers use such lending organizations. The Department of Finance remarked that "[o]ne thing we could do that … would (hopefully) help over time is through the consumer education functions of the Financial Consumer Agency of Canada. The more that people are aware that they have a right to a bank account (and) that bank accounts are available to them at a reasonable cost, … the more one can hope that they would not be persuaded to use financial service providers that charge much higher fees for services that could be, in some cases, available through their financial institutions. The consumer education function could play an important role."

In supporting the importance of education, the Competition Bureau said that one thing that is "absolutely essential for the good functioning of a marketplace is accurate information for consumers. … [T]he more information you can provide to consumers about the availability of bank accounts, the more they understand about their ability to open bank accounts and have access to financing at a better rate."

The need for education was also noted in comments by the Credit Union Central of Canada: "There are various reasons why people go to MoneyMart. We know that some people may not want to see a trail of their funds and others might not have the financial education to do business elsewhere. … [F]inancial education is probably a key in this area."

Regarding those who use the alternative financial services sector, the Public Interest Advocacy Centre informed the Committee that "(they) have very different credit histories and credit ratings. They are credit challenged. They have had difficulty getting credit cards or being able to make payments on credit cards. … (Some) use these financial services because it meets their day-to-day needs. They are unable to get through the month. They have shortfalls on day-to-day expenses. Their own personal comfort level

with debt is very low. They … (like) the bonded nature of the payday loan because it forces them, at the end of a two-week period, to pay off the loan." The Centre also suggested that people may feel uncomfortable or intimidated when dealing with banks, and noted the long hours and easy accessibility of alternative financial services providers. As well, employees of these providers are, in the Centre's view, trained to be "very non-banker-like and fairly comfortable to be around."

The Public Interest Advocacy Centre also indicated, however, that "often, people cannot pay off the loans because of the high charges that accompany them, and the ability people have to be able to roll these loans over. That is when they get into dangerous debt problems." In supporting the need for education, the Centre said that "people have a basic lack of financial literacy with regard to these loans."

Option consommateurs argued that "[b]ank practices in the area of credit combined with the closure of many branches and other forms of service reductions account for a large part of the success that MoneyMart and other such cheque cashing services and wage buyers are having these days."

The Canadian Bankers Association shared research results that it had commissioned from the Ryerson University Centre of Commercial Studies. The research concluded that "the payday lending industry is not locating in areas that are under-served by traditional financial institutions. Quite the opposite, they are locating in close proximity to the existing network of financial institutions." The Association also told the Committee about its finding that "over 50 per cent of payday lenders were located within 250 metres of a bank, a credit union or some other kind of traditional financial lending outfit, and 90 per cent were within 1,000 metres."

The Canadian Payday Loan Association – formerly the Canadian Association of Community Financial Service Providers – shared with the Committee survey results which indicated that "the vast majority of payday loan customers are informed consumers who know what they are buying." It noted that the survey "clearly demonstrates the strong demand from payday loan customers for the convenience and services of payday loan providers … . … [P]ayday loan customers are educated Canadians who know what they are paying for and appreciate the convenience and flexibility of the loans to help them with short-term cash needs. (They) choose payday loans over other options because they value the convenience and flexibility of the loans."

As well, the Committee was told that the survey concluded that "72 per cent of payday loan customers believe that most payday loan providers charge reasonable fees for the services they provide, considering short-term loans are offered without credit checks or collateral."

These results were, to some extent, supported by survey questions posed by the Financial Consumer Agency of Canada. The Agency told the Committee that respondents most

often said that they use payday loan services for the following two reasons: faster/more efficient/needed money immediately, followed by more convenient hours/overall convenience. The survey results also revealed, however, that 23% of respondents underestimated the costs of the cheque cashing service, and 37% underestimated the cost of payday loans.

Industry Canada told the Committee about the general responsibility of the Minister of Industry "to protect and promote the interests of Canadian consumers" and indicated that the Department is "the only government agency with a mandate to conduct policy research on the broad range of consumer marketplace issues." We were also informed about the payday lending work undertaken by its Consumer Measures Committee and about that Committee's focus on the harmonization of consumer legislation and on collaborative policy and information work.

Industry Canada said that "(the payday loan industry is) growing rapidly and it is difficult to get good data. … What is more important is the lack of information on why people are using the industry, because … (there is a suspicion) that a broad spectrum of people use the industry. … (There is a lack of) sufficiently robust statistical data on the circumstances of the people using this industry, particularly for borrowing purposes."

Industry Canada also said that it "(does) not understand why they are not using traditional financial institutions to get money, which is infinitely cheaper. Even getting a cash advance on a credit card is a cheaper way of borrowing money than getting funds this way. Is it ignorance? Is it that people just do not understand what they are doing? Is it a disclosure issue? Is it that these people do not have access to other forms of credit? It is difficult at this stage of the game to know what drives people to do things that on first blush seem to be irrational."

Finally, Industry Canada told the Committee about the Complaint Courier on the Canadian Consumer Information Gateway, which provides a link to complaint handlers, including the Centre for the Financial Services OmbudsNetwork.[40]

During this study, the Committee was struck by the extent to which alternative financial services providers – and the volume of business conducted by them – appear to be growing. We view their growth as somewhat alarming, since we do not believe that they are adequately regulated. While we recognize both the limited capacity of the federal government to act unilaterally in this regard and the comments made by the previous Minister of Justice and Attorney General of Canada indicating that action will be taken, we hope that appropriate actions are taken quickly. While we realize that the growth of alternative financial services providers suggests that there is a market for their services, they are virtually unregulated, and we believe that action is needed to ensure that consumers are not abused by them or the fees that they charge.

[40] See footnote 18.

Moreover, the Committee believes that more research is required by the academic community, as well as by others, to determine the causes underlying the growth in the use of such financial services providers. We believe that key questions need timely answers:

- are alternative financial services providers growing because more conventional financial services providers are not extending credit in a convenient manner, whether in terms of times of operation, interest rates and fees, or loan amounts?
- are more conventional financial services providers unable to serve this market and earn a reasonable rate of return on these services?
- at the most basic level, who is using alternative financial services providers, and why?

From this perspective, the Committee recommends that:

9. The federal government, on a priority basis, undertake a comprehensive study of alternative financial services providers, including the payday loan industry.

In order to protect the interests of the consumer, the study of alternative financial services providers should examine topics that include:

- **their growth over time, both in the number of service points and in the volume and value of business conducted;**
- **the reasons underlying their growth and increased use;**
- **the fees charged by them; and**
- **their regulation.**

The study should be completed as soon as practicable but no later than 30 June 2007.

CREDIT REPORT PRIVACY AND ACCURACY

Limited testimony was received by the Committee on the issue of credit reports. Those that commented focused on such issues as: the manner in which privacy is protected; the extent to which credit reports are accurate; and the role played by credit reporting agencies in the credit reporting process.

The two credit reporting agencies that appeared before the Committee – TransUnion of Canada Inc. and Equifax Canada Inc. – stressed that they are "repositor(ies) of consumer data." They do not grant credit or make decisions about whether credit should be granted or its amount; nor do they engage in credit rating or in the collection of money. It is the credit granter that decides the part of the credit market in which it wishes to do business and the level of risk it wishes to accept. If a credit applicant is declined a benefit, he or

she will be advised by the credit granter if a credit reporting agency was used in making the credit decision; if the credit report was the reason for the denial, the consumer will be advised how to contact that credit reporting agency.

The Committee was informed that, as mandated by consumer reporting legislation in Canada, a credit file contains identification information – such as name, address, telephone numbers and credit history – as well as public filing information – such as judgments and bankruptcies. Criminal and health information is not included in a credit file and nor is information on sexual orientation.

The credit reporting agencies described the volume of credit-related information received by them. According to TransUnion of Canada Inc., "[c]onsumer reporting agencies … receive roughly 100 million updates electronically transferred to (them) on a monthly basis. Credit granters, such as banks, trust companies, retailers, credit card companies and collection agencies, report these updates to (them). Consumer reporting agencies receive roughly 135,000 public record updates each month. … If an account is closed, or if a loan is paid in full, it is reflected in the monthly updates."

The Committee was also told that membership is required in order to access the data held by credit reporting agencies, and that a fee is paid for each credit file accessed. Access also requires that the members have permissible purpose and consent; the credit granter must have the consent of the consumer each time a credit file is accessed. TransUnion of Canada Inc. informed us that it rejects a large percentage of entities that request membership. The company will ensure that the applicant is a reputable, valid company and properly incorporated; as well, it will perform on-site inspections. After the data leaves the organization, the member is responsible for securing the data in its possession.

After providing two pieces of identification to ensure that the information is disclosed to the correct person, consumers can access their credit file without fee by mail, fax or telephone; access by Internet involves a relatively small cost. The Committee was told that, in 2004, Equifax Canada Inc., for example, fulfilled about 600,000 such requests in Canada, about one-third of them through the Internet. The Public Interest Advocacy Centre shared its estimate that about 17% of Canadian adults have checked their credit rating in the last three years; of those who did so, 18% found inaccuracies, with the main implication being that they were denied access to financial services.

The Committee was told that if consumers find that their credit file contains an error, they can ask that an investigation be undertaken, that information be updated or that information be verified. Of the 600,000 consumer requests for their credit files filled by Equifax Canada Inc. last year, about 30,000 consumer requests were made for investigation, updating or verification. The service is performed by the credit reporting agency without charge. The average time for an investigation, according to Equifax Canada Inc., is six days; should the credit granter establish that the information submitted by it is correct, the consumer has a right to put forth his or her position on the credit file.

In such cases, the consumer will also be informed about the Registrar of Credit Reporting Agencies, which exists in all jurisdictions except New Brunswick.

According to Equifax Canada Inc., the Registrar is responsible for investigating the issue with the credit granter, the credit bureau and the consumer, and has the power to force the credit reporting agency to delete information. Credit files that are changed – whether because of an error or as a result of a decision made by the Registrar – are sent to any credit granters that received them in the past six months, and the consumer is informed about the change.

Moreover, the Committee was informed by Equifax Canada Inc. that an "application for credit results in an inquiry to determine to what extent (the applicant is) seeking credit, and what kinds of credit (he or she is) using. … If there are a number of inquiries on the file, it can be proven empirically or statistically to have a predictive element in terms of guessing the likelihood of delinquency in the future. Someone who is seeking a lot of credit … intuitively … is a higher risk than someone who does not need any. Someone who has paid slowly in the past is likely to pay delinquent(ly) in the future. Someone who is using 90 per cent of their available credit versus 20 per cent is probably a higher risk."

The Public Interest Advocacy Centre noted that "(it) encourage(s) people to shop around, but each time there is an inquiry it is noted on the consumer's credit report. It makes no sense." The Centre also expressed the view that consent occurs at the beginning of the credit application process, but should be required each time an inquiry is made as a result.

Both TransUnion of Canada Inc. and Equifax Canada Inc. have chief privacy officers who oversee compliance with the *Personal Information Protection and Electronic Documents Act*. They also have personnel who ensure the accuracy of the data received by them, including information from credit granters and courthouses, and who ensure that the technology and infrastructure used by them is secure.

TransUnion of Canada Inc. told the Committee that its data centre is a secured facility that requires an identification badge for access. Moreover, the company has a policy that no one can enter the centre without being accompanied by an employee and being signed in. As noted earlier, once the member receives the credit information, it is responsible for securing the data in its possession.

The Office of the Privacy Commissioner of Canada informed the Committee that, "[i]n the past, (it) investigated complaints against the two major credit bureaus. … In 2002, (there was) a series of complaints where one of the credit bureaus was having difficulty meeting the time lines set out in the legislation to provide access to consumers. … (The Office) worked with the organization. (It) recognized the problem and … took appropriate measures to clear up the backlog of access requests and institute a procedure so that (it) could turn around the access requests within the 30 days allocated under the legislation. Subsequent to that, (the Office) received no further complaints on that issue."

Nevertheless, we were also told that the Office of the Privacy Commissioner has received complaints about the amount of information that appears on a credit report.

The Committee believes that, in some respects, public awareness about credit reporting agencies is lacking: how information is gathered; how the accuracy of the information is assured; how databases are maintained; how the electronic transfer of information is secured; how the information is used strictly for the purposes intended; and how credit report information is used by third parties.

The Committee is aware of the recent survey by MasterCard Canada and Decima Research which found that 37% of Canadians have consulted their credit reports.[41] We believe that Canadians should be consulting their credit reports more often, particularly in order to ensure the accuracy of the information contained therein. We believe that the fee required to access the report online may be prohibitive for some consumers, and urge the credit reporting agencies to assess whether the fee is currently set at a cost-recovery level; if not, we believe it should be lowered to that level. We also feel that the credit report received by a credit granter when assessing a credit applicant might usefully be provided to that applicant, subject to any privacy concerns.

Recognizing the importance of a consumer's credit file in determining the access to credit that may be required for full participation in the economic life of this nation, and the limited extent to which we believe the files are now accessed by consumers, the Committee recommends that:

10. The Financial Consumer Agency of Canada undertake an ongoing public education campaign to inform Canadians about the full range of issues related to their credit file and, in particular, the importance of assessing the accuracy of their file on a periodic basis.

PRIVACY WITH RESPECT TO DEPOSIT-TAKING INSTITUTIONS

While federal privacy legislation exists to protect Canadians, some of the Committee's witnesses commented on privacy with respect to deposit-taking institutions, particularly: past problems; the current situation; and the need for future improvements.

The Office of the Privacy Commissioner of Canada informed the Committee that since the *Personal Information Protection and Electronic Documents Act* came into force, more complaints have been received about the banking sector than about any other industry sector. In 2002 and 2003, 42% and 37% respectively of PIPEDA complaints

[41] MasterCard Canada, *Press Release*, "MasterCard Launches Second Annual Credit Report Week, Encouraging Canadians to Check Credit Reports," 20 September 2004, available at: http://www.mastercard.com/canada/general/press/pr_2004_09_20_credit.html.

received were related to banks. Many complaints about banks continued to be made in 2004, even though the Act was expanded to include a number of other industries.

The Office remarked that although, "[o]n the whole, Canadian banks are privacy sensitive and … have a long history of protecting personal information, … [t]he relatively large number of complaints reflects the ubiquitous nature of banks. Almost every Canadian has a bank account, and many Canadians have bank issued credit cards and mortgages or other types of bank loans. … Many of these complaints involve what might be called one-off problems – a careless or overzealous employee disclosing information without consent or using personal information without consent – as opposed to systemic problems involving bank policy. … All of the banks have, as required by the legislation, a person within the bank who is responsible for privacy." The Ombudsman for Banking Services and Investments is a second line of complaint, following which a complaint can be made to the Office of the Privacy Commissioner.

The Committee was also informed that the Office of the Privacy Commissioner has had many complaints about bank consent forms, but that it has worked with the banks to improve their forms. Consequently, these forms now comply with federal legislative requirements. Moreover, the Office has consent-related information on its website, which indicates the types of consent and the circumstances in which it would be appropriate to give consent.

The Office of the Privacy Commissioner made recommendations about how privacy in Canada might be improved. In its view, the *Privacy Act* "is seriously out of date in that it is now more than 20 years old … and it is severely limited. In that sense, we are working with an out-of-date instrument to try to protect information that, for example, flows from the federal government to the private sector, and may ultimately flow across borders … ."

The Office also noted that while the Treasury Board requires the Office to review privacy impact statements submitted by federal departments, there is no legislative foundation for that review; without a legislative foundation, there often is no funding. Moreover, the law is silent on the issue of data matching, and there is only limited access to the courts under the *Privacy Act*; access under the PIPEDA is significantly broader. The Office also indicated that it does not have adequate resources to fulfil its mandate.

The Committee supports the protection of personal privacy in Canada, and believes that the system in place in this country is among the best in the world. Nevertheless, while we have privacy legislation and a Privacy Commissioner, these measures are meaningless unless the legislation and its regulations are enforced, and unless the Privacy Commissioner has the power to ensure that citizens are protected. It must be the case that our social insurance numbers are protected, that our personal information is not sold or given to third parties for unintended uses and that Canadians know that privacy violations will have significant consequences.

The Committee is aware that the PIPEDA will undergo a mandatory five-year review, which is due to begin in 2006, and – with this knowledge – recommends that:

11. Parliament, in its forthcoming review of the *Personal Information Protection and Electronic Documents Act,* examine the extent to which existing provisions ensure that the personal information of Canadian consumers of financial services products is protected, both domestically and internationally.

Should the provisions be found to be inadequate, the federal government should amend the Act on a priority basis.

PROTECTING DEPOSITS, INVESTMENTS AND INSURANCE

During this study, the Committee's witnesses focused on protection against loss in three areas: deposits; investments; and insurance.

The Canada Deposit Insurance Corporation informed the Committee that it protects depositors in three ways:

- by promoting standards of sound business and financial practices, thereby reducing the likelihood of CDIC-member institution failure;
- in the event of failure, by providing prompt payments to depositors and using innovative techniques to minimize losses and disruptions to depositors; and
- by promoting public awareness about deposit insurance, since "well-informed financial consumers are a massive force for stability."

Deposit insurance protection is important because, according to the CDIC, "[u]nlike most other creditors …, depositors are in less of a position to assess the risks they face and bear the loss of their savings." The CDIC is typically the largest creditor in a failure and, as an insurer, has a direct financial exposure to losses. Canada's insolvency laws do not provide priority for depositor claims over those of most unsecured claims, and the CDIC claims rank *pari passu* with those of uninsured depositors.

Regarding deposit insurance, the Department of Finance noted that protection limits have changed over time, and said that "[w]hen a level of protection is established, the limit must be fair and must provide a sufficient degree of protection for the majority of depositors in Canada."

Although the issue was not raised during our current study, the Committee wishes to re-iterate its position on the amalgamation of the Canada Deposit Insurance Corporation and the Canadian Life and Health Insurance Compensation Corporation, which was recommended by the federal Task Force on the Future of the Canadian Financial Services

Sector. We examined this issue in our 1994 report, *Regulation and Consumer Protection in the Federally-Regulated Financial Services Industry: Striking a Balance*. We also addressed the issue in our 1998 report, *A Blueprint for Change: Response to the Report of the Task Force on the Canadian Financial Services Sector*. Then, as now, we reject the amalgamation, believing that some of the conditions that led to our 1994 recommendation continue to exist.

While the Committee was pleased with the 2005 federal budget announcement about the increase in the protection limit for eligible deposits in CDIC-member institutions, we believe that regular review of the limit must occur. In our view, too much time lapses between each upward revision of the amount. We support the assertion of the Department of Finance that the limit must provide a sufficient degree of protection for the majority of depositors in Canada. Recognizing that changes in deposits occur over time, the Committee recommends that:

12. The federal government work with the Canada Deposit Insurance Corporation (CDIC) to develop a mechanism by which the limit of protection for eligible deposits in CDIC-member institutions would be reviewed every five years.

During the review, the parties should consider the extent to which the limit should be increased to reflect such factors as inflation and the change in the average level of deposits held by Canadians and Canadian businesses, among others. Moreover, the limit should be established at a level that ensures a sufficient degree of protection for the majority of depositors.

Protection and – by extension – the extent to which insurance policy holders may not be protected, was mentioned by a number of witnesses. In this regard, a lack of information about insurance firms' solvency was highlighted. Mr. Claude Gingras, appearing on his own behalf, told the Committee that "[i]n the past, there was a lot of information available. There was … the Blue Book, published by the Superintendent of Insurance. … You could find out practically anything on a given company, surplus, profits or losses. … These publications no longer exist and it is practically impossible to obtain information. … (Companies) plead confidentiality. Your policy can be transferred to another company. You chose a company because you thought it was solvent. The company chooses to sell a block of accounts to another company and you can do nothing about it."

The Canadian Life and Health Insurance Compensation Corporation told the Committee that its "mandate is to protect policy holders" and that it is "accountable to the government and industry to deliver on that protection." In the Corporation's view, this protection, which continues covered benefits under the original terms of a policy, "is particularly important to policy holders who are receiving disability or retirement income benefits …" and to "those … who are no longer insurable because of deterioration in health … ." The Corporation believes that "[s]hould a life insurance company become insolvent, it is important to the industry that policy holders are not seen to be poorly

treated in such circumstances. (The protection provided by the CompCorp) helps the industry maintain its reputation for fair dealing with policy holders and for living up to its promises."

The Property and Casualty Insurance Compensation Corporation noted that while all insurance companies are provincially supervised for purposes of consumer or market conduct, 85% are federally supervised for solvency while the remaining 15% are provincially supervised. In the Corporation's view, "the majority of the problems … have been provincial. … [F]ederal supervision is meeting best international practices, but provincial supervision sometimes does and sometimes does not."

In speaking about information on the solvency of particular insurance companies, the Property and Casualty Insurance Compensation Corporation said that "the public at large (does) not have readily available information about what is a strong, healthy insurance company and what is a weaker one. … Through the Internet, it is possible to get considerable current financial information about all the companies supervised by the federal government. … (The Corporation) would welcome more provincial governments putting the same kind of information on their websites, such as the current financial health of the companies they are supervising. In Quebec, there is partial information; in the other provinces, there is not yet any information."

In speaking specifically about holders of life insurance policies, Mr. Claude Gingras told the Committee that "much of the protection of (policy holders) is a question of market conduct, and therefore, it falls under provincial jurisdiction. … Unfortunately, there is not an agency in Ottawa that protects the interests of life insurance (policy holders), who are, in fact, small investors. … For more than 100 years, (the Office of the Superintendent of Financial Institutions) defended the rights and interests of (policy holders). In the last few decades, it seems to have completely abandoned this role. … OSFI has changed completely since the merger with the Office of Inspector General of Banks in 1987."

Mr. Gingras cited the legislation governing the OSFI, which states that: "In pursuing its objectives, the Office shall strive to protect the rights and interests of (policy holders)." In his view, with a focus on solvency, policy holders will not receive the dividends that they should receive because the more surplus the company has, the more solvent it is. He also remarked that disclosure is needed so that policy holders know how their money is administered, and that boards should be required to form a policy holder affairs committee.

The Insurance Bureau of Canada told the Committee that there are about 2 million property, home, auto and business insurance claims made in Canada each year. About 2% of these claims require either litigation or some form of arbitration. Options for consumers who are dissatisfied with the manner in which their claim is handled include industry-funded information centres operated by the Bureau, with professionals who are trained to answer questions and handle most complaints. The Bureau also has toll-free

numbers. If consumers remain dissatisfied, the General Insurance OmbudService is available.

While – thankfully – it is rarely the case that insurance companies in Canada experience insolvency, it is nevertheless worrisome for the Committee that some Canadians may find themselves in difficulty because of a company's insolvency. Part of the solution, we feel, lies in ensuring that consumers have the best and fullest set of information available before they determine the company from which they will purchase insurance products. Thus, we would encourage the provinces/territories to require greater public disclosure on the solvency of insurance companies.

The Committee is reminded of the assertion of the Canadian Life and Health Insurance Compensation Corporation that "many of the products which are covered by the $60,000 (limit) in (the life and health insurance) industry (are) very similar to those of the deposit-taking institutions. From a consumer point of view, it makes sense if we move in harmony on those and not have different coverage on the different levels. … What we would like to see happen is that (the life and health insurance) industry would be involved with the deposit-taking industry, (the) CompCorp involved with (the) CDIC, in joint discussions about what would be good in terms of the consumer … ."

The Canadian Life and Health Insurance Compensation Corporation made this statement when the level of protection provided by the Canada Deposit Insurance Corporation was $60,000. With the subsequent increase in the level of protection offered by the CDIC to $100,000, the Committee urges those responsible for protection of insurance policy holders to increase the limit for consumers negatively affected by insurance company insolvency to a similar amount.

SECURITIES REGULATION

A. A Common Securities Regulator

The issue of securities regulation, which continues to be an ongoing concern of witnesses appearing before the Committee, was addressed from a variety of perspectives: the benefits of a single regulator; the downside of the status quo; and a possible model for the future.

As noted earlier, oversight of securities markets is the responsibility of the provinces/territories, and each province/territory has its own securities commission or administrator that regulates the securities industry and the sale of securities to the public. The Canadian Securities Administrators provides a forum for the national coordination and harmonization of capital markets regulation.

In support of a single securities regulator, the Department of Finance indicated that "[o]ne of the reasons that (the federal government) favour(s) the development of a single, national securities regulator is that many of these markets are national in scope and many of the issues are common to all Canadians. Therefore, a single, national regulator would be, perhaps, a more effective way of delivering whatever the appropriate regulatory policies might be … ."

Other witnesses, too, supported changes to the current system of securities regulation. The Investment Dealers Association of Canada said that "there are two ways of improving regulations in Canada: the current system – but much more harmonized – or a national system that recognizes regional markets. … We … need to make regulation in Canada more efficient because we are suffering from a competitive disadvantage. We are in a unique position of being the only developed capital market in the world without a national regulator. … What is not acceptable is to be against a national commission and not be prepared to improve the current situation."

The Small Investor Protection Association told the Committee that "we need a federal agency that is responsible for consumer protection; such an agency would lead to an improved regulatory system. The agency could be either a national agency or a harmonized agency. We feel there is a dire need for a federal authority to look after the consumer investor."

Similarly, the Canadian Association of Retired Persons supported a single regulator, arguing for "a fundamental comprehensive structural change to create a single national pan-Canadian securities regulatory framework, especially in regards to mutual funds because the majority of (Registered Retirement Savings Plans) and (Registered Pension Plans) that are held by 50-plus Canadians are held in mutual funds. … Canadians make investments in financial markets across Canada regardless of the province in which they live, and the province in which the market is located. Uniform regulations should follow investments across provincial and territorial lines by providing protection across the country by a single national securities regulator."

Moreover, the former Chair of the Ontario Securities Commission mentioned the hearings held by the Ontario Legislature's Standing Committee on Finance and Economic Affairs on the occasion of the five-year review of the Securities Act. In its October 2004 report, the Committee recommended the establishment of a single securities commission on a priority basis. As well, he said that he believes "a single national regulator for Canada is an absolute essential. … [W]e have passed the point of no return, and now it is a question of when and how and not whether. … [W]ith a national regulator, we will have uniformity and much less confusion and fragmentation for investors. Investors now invest across provincial borders. Torontonians invest in Western companies, and so on."

The Department of Finance told the Committee that, in September 2004, all provinces except Ontario either had signed, or had committed to signing, a memorandum of understanding regarding the establishment of a passport system of securities regulation. According to the Department, this type of system "would allow participating provinces to recognize each other's rules but keep their own separate securities commissions in place." In the Department's view, however, while this type of passport system would be an improvement over the status quo, it "simply does not go far enough to provide the kind of dynamically robust system that Canada deserves."

The Department of Finance also noted the federal government's commitment to move forward on the establishment of a single securities regulator, but said that "[t]o be realistic, moving forward on this does not mean we are going to have everyone in at the start. We have to move toward an opt-in model where willing provinces can come on board and work with us to design, and others can come in and join whenever they are ready."

The Committee is aware that the issue of a single securities regulator has been discussed in Canada since the 1960s, and fully supports the conclusion reached by the Wise Persons' Committee to Review the Structure of Securities Regulation in Canada: "It's time for Canada to have a single securities regulator." While, over time, we have been encouraged by discussions that – at a minimum – would seem to indicate some harmonization of securities regulation across jurisdictions, we join many in urging the expeditious development of a common securities regulator within Canada.

In our June 2005 report, *Falling Behind: Answering the Wake-Up Call – What Can Be Done To Improve Canada's Productivity Performance?*, the Committee noted that smart regulation is needed to ensure the productivity growth that is needed for our future prosperity. We believe that the regulatory burden in Canada may be creating a competitive disadvantage in a number of areas, and that this burden must be minimized. We will be exploring the issue of internal barriers to trade – and any associated regulatory burdens – during a forthcoming roundtable discussion. With respect to securities regulation, however, we believe that there is an urgent need to act.

Forty years have passed since discussions about a single securities regulator began, and Canada is not appreciably closer today to meeting that goal. The Committee believes that the current system of securities regulation is inconsistent with our productivity goals, our goal of seeking to be a leader among the G-8 nations, and our goal of adapting to the changing environment faced by regulators, capital market participants and countries operating in the international marketplace. While discussions over time have focused, to some extent, on where such a regulator should be located, we believe that the United States provides a model: the Securities and Exchange Commission is located in the federal capital region of the District of Columbia. It is from this perspective that the Committee recommends that:

13. The federal government take a leadership role and invite provincial/territorial governments and Canada's securities commissions to meet expeditiously with a view to establishing a common securities regulator no later than 30 June 2007. In the interim, efforts to harmonize securities regulation should be accelerated.

The regulator should be located in the National Capital Region.

B. Hedge Funds

The Committee received limited information on hedge funds which, as indicated by Figure 27 in Chapter 2, are growing quickly as an investment vehicle. We are aware of a number of recent media reports regarding hedge funds losses, and are struck by what appears to be a relative lack of regulation in this area alongside more complex and – typically – more aggressive and active investment strategies. This seeming lack of regulation is particularly troubling for us given the value of money in hedge funds.

The Committee supports the Alternative Investment Management Association Limited's assertion to us that "the term 'hedge fund' covers a very diverse field of organizations and behaviour that defy any simple definition … ." The organization noted that hedge funds are generally associated with "sophisticated clients who regularly invest relatively large sums of money," and itemized the benefits that such funds can provide to investors and financial markets.

The Committee was informed by the Alternative Investment Management Association Limited that, "[a]s recently as 1999, the Canadian (hedge fund) market was made up of less than 50 hedge funds with roughly $2.5 billion in managed assets. By June 2004, the market had grown to approximately 190 hedge funds and hedge fund-related products with $26.6 billion in assets. … Canadian pension plan assets represent a significant amount of the funds invested in hedge funds … ." The organization also indicated that hedge funds that offer their securities in Canada or to Canadian residents must comply with regulations intended to: maintain the integrity of the Canadian financial market; protect investors; and respect privacy requirements and reporting obligations under anti-money laundering and anti-terrorist financing legislation.

The Committee's focus in this report is consumer protection in the financial services sector, and recommendations that might be implemented by the federal government in order to protect consumers better. Regarding hedge funds, we are particularly concerned about the increased involvement of the "retail market" – or general investing public – in purchasing hedge funds which, historically, were marketed to high-net-worth and institutional investors, or what is known as the "exempt market." Although we understand that hedge funds targeting the retail market have tended to be relatively more regulated than those intended for the exempt market, we – like the Investment Dealers Association of Canada – have concerns, and we believe that there are deficiencies that must be corrected.

In the Committee's view, these deficiencies include, but are not limited to: disclosure of information; conflicts of interest; marketing practices; registration requirements; and the extent to which prospectus exemptions and filing exemptions may be used by hedge funds. We also observe that principal-protected notes, which are perhaps the fastest growing alternative investment product in Canada, are not protected by the CDIC in the event that the financial institution that issued them becomes insolvent. We are also concerned that these notes may be associated with aggressive practices to generate needed returns.

The report *Regulatory Analysis of Hedge Funds*, which was issued by the Investment Dealers Association of Canada on 18 May 2005, was brought to the Committee's attention. In the report, the IDA shares its view that "there should be a review of provincial laws, regulations and approaches and, if the regulatory tools are not available, development of amendments that will bring hedge fund products being offered to the retail investor fully within the regulatory system."

The Committee fully endorses the IDA's view in this regard, believing that this area is one in which consumers increasingly need enhanced protection. We are also aware that, by 1 February 2006, certain hedge fund managers were required to register with the U.S. Securities and Exchange Commission, a requirement that flowed from a September 2003 report highlighting concerns about investor protection in light of hedge fund growth. From this perspective, the Committee recommends that:

14. The federal government appoint an eminent person to undertake a review of hedge funds. This review should include a focus on appropriate regulatory oversight, and should be tabled in Parliament no later than 31 March 2007.

Finally, the Committee believes that many of the new financial products may be somewhat difficult to understand, particularly for consumers who have limited financial education. One product that may not be readily and completely understood is income trusts, a subject about which we held hearings in fall 2005 in the course of another study. Since our hearings on this topic were not exhaustive, we intend to consider whether additional study and a report by us are required.

INTEGRATED MANAGEMENT ENFORCEMENT TEAMS

Witnesses raised a number of financial services enforcement issues with the Committee. One particular enforcement mechanism, however, involved Integrated Management Enforcement Teams (IMETs): who they are; what they do; and what they need to do a better job.

The Royal Canadian Mounted Police (RCMP) informed the Committee that the IMET "initiative has strengthened the law enforcement community's ability to detect, investigate and deter capital markets fraud by focusing resources on the investigation and prosecution of the most serious corporate frauds and market illegalities. … We are well on our way to … ensuring investors that Canada's markets are safe and secure."

In its appearance before the Committee, the RCMP indicated that there were 7 active project investigations and 26 "somewhat less serious" active investigations; the capitalization of the companies at risk was estimated at $55 billion. The RCMP said that there is a fraud component to virtually all of the cases.

The Committee was also told, however, that "[s]ome would describe this as a target-rich environment. … There are more cases than (the RCMP) can deal with." We were informed that, since one full team is allocated to each project status investigation, the likely result is that IMET managers may have to "turn away some complaints." Nevertheless, the RCMP also indicated that "the mandate … of the IMETs is very narrow in terms of the large sphere of white collar crime, and the program is properly resourced for what we are currently attempting to do." The RCMP added that "[t]he bigger issue is the commercial crime sections. … I would not be completely honest if I said that we do not need more resources on the commercial crime side."

In discussing the success of recent *Criminal Code* amendments regarding capital market offences – specifically, those with respect to insider trading, production orders and concurrent jurisdiction – the RCMP indicated that it is too early to assess the extent to which the amendments have had the intended effect. Consequently, it is premature to suggest additional amendments.

The Committee believes that, in some sense, criminal prosecution is the ultimate form of consumer protection. Certainly, during our 2003 study of investor confidence, we were concerned about the impact on investor confidence of the "corporate scandals" that were occurring at that time. For this reason, in our June 2003 report, *Navigating Through "The Perfect Storm": Safeguards To Restore Investor Confidence*, we recommended that:

> The federal government review current legislative and regulatory provisions regarding fraud, insider trading and other offences, including the adequacy of any penalties, with a view to implementing any needed changes as expeditiously as possible. It should also examine the extent to which existing procedures and resources are adequate to ensure that instances of corporate corruption are properly prosecuted.

In that report, the Committee also noted that Bill C-46, An Act to amend the Criminal Code (capital markets fraud and evidence-gathering), had been introduced in the House of Commons as the Committee's report was being finalized. As well, the report discussed the 2003 federal budget announcement that up to $30 million annually over a five-year

period would be allocated to fund co-ordinated national enforcement units to strengthen investigation and prosecution of the most serious instances of corporate fraud and market illegality. This concept was also noted in the 2002 Speech from the Throne. Moreover, mention was made of an RCMP RECOL (Reporting Crime On-Line) Centre to provide a single point of entry to lodge a complaint concerning fraud and to have it directed to the appropriate law enforcement agency for action. We support the Integrated Management Enforcement Team initiative, but believe that greater support is needed: financial support and support in the form of a sufficiently broad range of skills. For this reason, the Committee recommends that:

15. The federal government provide the necessary financial support for the Integrated Management Enforcement Teams and ensure that the teams include the appropriate number and mix of legal, regulatory, accounting, business and other skills needed to investigate corporate fraud and market illegalities.

As the Committee noted in its June 2003 report, in addition to *Criminal Code* offences, the *Canada Business Corporations Act* has provisions regarding insider trading. Moreover, provincial/territorial securities commissions have both penalties and powers, including ordering repayment when investors lose money because of improper conduct, and giving investors in the secondary market a simple procedure for suing companies, directors, officers, underwriters and experts that make misleading or untrue statements or that fail to give full and timely information. The Office of the Superintendent of Financial Institutions also has certain authorities in respect of federally regulated financial institutions.

During our 2003 hearings, some of our witnesses discussed enforcement. The Investment Dealers Association of Canada advocated the delegation of certain enforcement powers to a specialized, integrated capital markets investigation unit as well as special courts to address lengthy, complex white-collar crimes. Another witness, Mr. Peter Dey, suggested that the most effective way to improve investor confidence could be significant sanctions for those who violate securities rules. In his view, the associated publicity could do more to improve investor confidence than all of the regulations that could be passed. The British Columbia Securities Commission spoke about the three-legged stool of deterrence in securities markets: regulatory enforcement or regulation generally; civil liability; and criminal enforcement. The Committee also commented on testimony we heard in the United States about the impact of televised “perp walks” on investor confidence.

At that time, the Committee supported enforcement, believing that legislation to protect investors does not lead to the highest possible levels of confidence if instances of insider trading and other violations are not suitably punished. We argued then that the political will is needed to prosecute offenders with appropriate penalties, and adequate resources must be devoted to ensure compliance with legislative and regulatory requirements.

The Committee continues to support the prosecution of wrongdoing, with adequate resources, and re-iterates a portion of our earlier recommendation. We believe that a key aspect of consumer protection is punishing those who compromise the confidence placed in them by consumers of financial services. Therefore, the Committee recommends that:

16. The federal government examine existing procedures and increase resources to ensure more effective prosecution of corporate corruption.

SELF-REGULATORY ORGANIZATIONS

Witnesses presented the Committee with a variety of views on the issue of self-regulatory organizations: some supportive; some not; and some focussed on the potential conflict of interest.

In support of self-regulation, the Investment Dealers Association of Canada told the Committee that "the rationale for self-regulation is that it brings to the development of policy the expertise of industry people who are close to the markets, who have the knowledge of how things work, who can provide practical solutions and achieve the regulatory purpose without undue cost and collateral damage. … [S]elf-regulatory organizations are the channel by which (policy development) is achieved. … The issue is that self-regulation by its nature inherently has conflicts of interest. That is obvious. The question is, 'What checks and balances exist to ensure that public interest always takes precedence over the interest of members?'" The Association continued by noting public directors, governance committees and regulator approval of its policies as illustrations of its checks and balances.

The Investment Dealers Association of Canada also asked for enhanced enforcement powers that it believes are needed to enable it to do its job fully. In the Association's view, "[e]nforcement is the key. If you do not have strong enforcement, you do not have effective regulation. Strong enforcement is critical for maintaining investor confidence. People have to do the 'perp walk'." In particular, the Association argued that it needs to be able to: subpoena witnesses who are not employees; subpoena documents; continue to pursue employees who have left the industry; and appoint a monitor when a firm is close to, but is not yet, bankrupt.

The inherent conflict of interest with self-regulatory organizations was also noted by the Small Investor Protection Association, which argued that self-regulation works for an industry; these organizations should not, however, have a primary mandate for investor protection. This view was supported by the Canadian Association of Retired Persons, which posed a question: "Can an industry regulate itself and at the same time protect all the elements that go into the regulation of that industry?"

Appearing on his own behalf, Mr. Robert Kyle told the Committee that "(the investing public is) not confident that complaints will always be handled in an objective manner under a system of self-regulation. … When Canadian citizens witness what they believe to be a crime, they will call the police. When an investor feels they have been victimized, they will logically contact the organization empowered to enforce securities law, in this case the securities commissions. … The statutory regulators will send the aggrieved investor to either the Investment Dealers Association of Canada or the Mutual Fund Dealers Association of Canada – … the very same association that represents the securities dealer that the investor has a complaint against. It is then that the association will make a determination as to whether the investor's claim has merit. In all cases, their determination will not result in any charges being laid for breaches of securities legislation or the Criminal Code by either the IDA or the MFDA. … The SROs do not have the ability to administer securities legislation or the Criminal Code … ."

Mr. Kyle continued by indicating that "[u]ltimately, a system run by the banks and the dealers themselves is not one people will be comfortable with. … The system is not set up for the investor. It is set up for the industry. … [E]very aspect of it is co-opted by the industry. … Court is one avenue, but it is a very expensive route that most cannot afford. We have a system where governments have downloaded or … abrogated their responsibility from the securities commissions themselves to the private authority. … If investors feel that they have been victimized and that it might be contrary to the law – the law being the Criminal Code or the securities legislation – who determines that for them? They never get the opportunity, because the private authority does not have the authority to do that. … It is unfair to expect (the MFDA and the IDA to regulate the industry) when (they do not have) the tools required to do it. "

The Committee supports the view of witnesses who believe that perceived conflicts of interest exist with respect to self-regulatory organizations. We also, however, recognize the efforts taken by such organizations to mitigate, if not eliminate, this perception. Earlier, we mentioned the importance of the key principles of independence and transparency. We believe that those concepts also have application here. In our view, perceived conflicts of interest are reduced when a board of directors has a significant proportion of independent directors and when there is transparency, including with respect to the appointment of directors and the compensation of financial services professionals. It is from this perspective that the Committee recommends that:

17. The federal government take a leadership role and invite provincial/territorial governments and representatives of self-regulatory organizations – including the Investment Dealers Association of Canada and the Mutual Fund Dealers Association of Canada – to meet with a view to ensuring that such organizations operate in a manner that minimizes conflicts of interest and that ensures protection for the consumers of financial services.

THE COST OF INSURANCE

The Committee's witnesses made a number of comments about insurance: the cost; the availability; and the turnaround in the industry.

The Canadian Federation of Independent Business told the Committee that some property and casualty premiums were tripling or quadrupling, some businesses were experiencing reduced coverage and, "worst of all, some businesses were not able to get insurance for any amount of money." As well, other changes were being made without notification being given to the policy holder. The Federation's members identified insurance as the number one input cost having a significant impact on their business: "Insurance costs significantly outweigh bank service charges across the country." The Federation advocated government investigation into the insurance industry, notably for business insurance, and argued that "a voluntary code of conduct coming out of the insurance industry would be a very good move at this point in time, … ."

The Committee was informed by the Insurance Bureau of Canada that "[t]he last few years … were not particularly pleasant for anyone involved in (the property and casualty) industry. The good news is that that period is clearly behind (the industry) and (it has) returned to a period of financial health, which is encouraging strong competition and price stability amongst (the Bureau's) members."

This turnaround in the industry was also mentioned by the Insurance Brokers Association of Canada, which said that "premiums (are) generally on a downward trend, while capacity and availability has been on an upward trend for the past several years. … (The property and casualty industry has) definitely turned a corner in the cycle." That being said, the Association also noted that "no amount of industry profitability will ever put an end to availability or affordability issues on some lines of insurance. Certain types of risk because of their very nature are likely to remain difficult to insure."

The Insurance Bureau of Canada also told the Committee that commercial insurance premiums have fallen by about 2%, that drivers in Atlantic Canada, Ontario and Alberta have benefited from $1.4 billion in premium savings, and that homeowners insurance premiums have levelled off and, in some cases, started to fall. As well, the Bureau pointed out that "the percentage of (personal) disposable income that (is) spent on insurance … has not changed drastically from the approximately 2 per cent spent in 1989." From the perspective of businesses, we were told that "insurance as a percentage of operating profits for Canadian businesses … has not changed drastically over the last 15 years. … [I]n 1989, it was about one quarter of 1 per cent, and in 2003, it rose to one third of 1 per cent."

The Committee understands that the insurance industry appears to be healthier than in recent years, with perhaps reduced consumer concerns about access and affordability. Nevertheless, like access to credit, we believe that access to insurance helps to ensure that

individuals and businesses can participate meaningfully in society, with reduced concerns about the impact of unforeseen events on them. We are mindful of the significant cost of insurance in some cases, and believe that high costs limit both individual and business prosperity. In an effort to ensure that consumers of insurance products do not experience significant accessibility and cost concerns in the future, the Committee recommends that:

18. Industry Canada and the Financial Consumer Agency of Canada work with representatives of the insurance industry on an ongoing basis with a view to ensuring that insurance products meet the needs of Canadians and Canadian businesses in terms of availability, cost and coverage.

Earlier, the Committee noted its support for the efforts of the Financial Consumer Agency of Canada in providing information on its website that allows consumers to compare certain financial products in order to select the financial services provider and product that are best suited to their needs. We believe that this service has been invaluable to many consumers, and is an efficient way of enabling better decision making. In our view, there is a need for a similar service to be provided to consumers with respect to insurance providers and products. From this perspective, the Committee recommends that:

19. The Financial Consumer Agency of Canada work with stakeholders to gather – and update continuously – information that would allow consumers to compare insurance products in order to identify the insurance provider and the insurance product that is best suited to their needs. This information should be available in a range of formats, including electronically.

BROKER COMPENSATION

Witnesses raised a number of issues related to the compensation received by certain financial services professionals with whom they do business: investment dealers; insurance brokers; and the issue of commissions.

With respect to investment dealers, the Investment Funds Institute of Canada mentioned a working group addressing enhanced disclosure and raised a number of questions: what are the potential conflicts with your dealer? What is the representative paid? What is the dealer paid? The Institute expressed support for clear and effective disclosure with respect to mutual funds, and other products.

Regarding property and casualty insurance broker compensation, the Insurance Brokers Association of Canada told the Committee that compensation practices vary from province to province and from insurer to insurer. Nevertheless, the “general rule is that

most brokers in Canada are compensated on a sales commission basis with the potential for a contingent commission based on profit."

Moreover, the Insurance Brokers Association noted that "[s]ince January 1 (2005) Ontario brokers have been voluntarily disclosing to their (policy holders) the commission rates as well as the financial involvement by insurers for each of those with whom they deal. Brokers in Nova Scotia also provide this information to insurance consumers upon request. … [B]rokers in other provinces are contemplating similar measures."

Finally, the Insurance Brokers Association also mentioned the Insurance Bureau of Canada's Code of Consumer Rights and Responsibilities. The Bureau told us that "[a] consumer can go into any insurance company and see their full range of contingent commissions, regular commissions and their full range of compensation to their distribution force. … (Moreover,) almost every property and casualty insurance company's website (contains) an indication of the percentage of compensation and fixed compensation they pay to a broker with which they have a relationship."

The Committee is aware of concerns about how compensation is paid to dealers and brokers, and how the advice that they give consumers can be affected by their compensation arrangements. To some extent, these types of questions were raised in the investment context during our 2003 hearings related to investor confidence. We believe that financial services professionals must always – as their first priority – have the best interests of their clients in mind. They must not be faced with incentives to sell more than the consumer wants and needs, or to sell the consumer a particular product, perhaps from a particular source.

Earlier, the Committee mentioned transparency. The issue of disclosure has also been raised at various points throughout this report. In essence, we feel that dealers and brokers must be compensated in a manner that provides an incentive to know their client and to focus on that client's needs rather than on their own compensation. We also believe that, in the interests of transparency, consumers should have easy access to the type of compensation information that will enable them to identify the financial services professional with whom they wish to do business. For this reason, the Committee recommends that:

20. The federal government, together with provincial/territorial governments as required, work with organizations representing investment and insurance professionals to ensure that public information is readily available on such topics as: commission rates; the proportion of fixed compensation; and contingent commissions.

CHAPTER 4: CONCLUSION

In virtually every study we undertake and virtually every issue we address, the Committee is concerned about consumers and businesses: how do the actions, institutions and measures we examine affect our national economy, our productivity and competitiveness, and our desire for improved prosperity and a higher standard of living for all citizens and all businesses.

The financial services sector plays a vital role in the daily lives of Canadians, in the growth of Canadian businesses and in the prosperity of the Canadian economy. It is important that Canadians and Canadian businesses be well-served by the financial services sector and be protected against any abuses occurring within it. Moreover, the financial services sector itself must be strong and healthy.

In our 1998 report, *A Blueprint for Change: Response to the Report of the Task Force on the Canadian Financial Services Sector*, the Committee said: "Consumers are entitled to a competitive marketplace, accessible and effective redress mechanisms, clear information that is easily understood with full and timely disclosure, a marketplace with non-coercive sales practices and privacy protection for personal information."

Clearly, the Committee believes in protecting the consumers of financial services. We also feel, however, that the proper balance between rights and protections for consumers on the one hand, and rights and protections for financial institutions on the other hand, must be struck. In our view, the recommendations we make in this report will help to ensure the appropriate balance.

Implementation of the Committee's recommendations would increase the protection of consumers of financial services by providing them with more information and education, a streamlined dispute-settlement process and safeguards respecting their personal information, among other benefits. Moreover, it would increase the protection of financial institutions by helping to ensure a higher level of efficiency and effectiveness, as well as the transparency and accessibility that consumers – their clients – desire.

The Committee felt that, approximately five years after the provisions of Bill C-8, An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions, came into force, there was a need to determine whether the agenda had been completed: whether the protections that were envisioned in 2001 were having the intended effect. We found that while some measures have worked extremely well, there is – as is to be expected – room for improvement with respect to others. We are confident that the changes we recommend will have the intended effect of increased consumer protection within the financial services sector, a sector that is characterized by perhaps the two most fundamental requirements for consumer

protection: a competitive sector and a sector with a high degree of solvency. Our recommendations would help to ensure that the agenda for consumer protection is completed.

APPENDIX A: WITNESSES

Name of Organization	Name of Witness	Date of Appearance
Alternative Investment Management Association Limited	**James McGovern**, Chairman **Gary Ostoich,** Legal Counsel	June 8, 2005
As an individual	**Claude Gingras**, Legal Advisor, retired	April 14, 2005
As an individual	**Robert Kyle**	May 4, 2005
Canada Deposit Insurance Corporation	**Ronald N. Robertson**, Chairman of the Board **Jean Pierre Sabourin**, President and Chief Executive Officer	February 9, 2005
Canadian Association of Retired Persons	**Bill Gleberzon**, Co-Director of Government & Media Relations	April 14, 2005
Canadian Bankers Association	**Raymond J. Protti,** President and Chief Executive Officer **Terry Campbell**, Vice-President, Policy **Caroline Hubberstey**, Director, Public and Community Affairs	April 21, 2005
Canadian Bankers Association	**Louise Bourassa**, Senior Vice-President, Administrative Services, Laurentian Bank of Canada **Terry Campbell**, Vice-President, Policy	October 27, 2005
Canadian Federation of Independent Business	**Catherine Swift**, President and Chief Executive Officer **André Piché**, Director of National Affairs	February 17, 2005
Canadian Institute of Actuaries	**Charles McLeod,** President	November 3, 2005
Canadian Life and Health Insurance Association	**James Brierley,** Chairman, President, Munich Re Canada **James S. Witol,** Vice-President, Taxation and Research	November 3, 2005
Canadian Life and Health Insurance Association	**Gregory R. Traversy**, President **James S. Witol,** Vice-President, Taxation and Research	May 5, 2005
Canadian Life and Health Insurance Compensation Corporation	**Gordon M. Dunning**, President and Chief Executive Officer	February 17, 2005
Canadian Life and Health Insurance OmbudService	**Gilles Loiselle**, Chair **Barbara Waters**, General Manager	March 10, 2005

Canadian Payday Loan Association	**Norman J.K. Bishop**, Board Secretary	October 27, 2005
Canadian Payments Association	**Pierre Roach**, Vice-President, Payment Services **Doug Kreviazuk**, Vice-President, Policy and Research	October 27, 2005
Centre for the Financial Services OmbudsNetwork	**Huguette Labelle**, Chair and Independent Director **Pierre Gravelle**, Chief Executive Officer	March 9, 2005
Competition Bureau	**Sheridan Scott**, Commissioner of Competition **Gaston Jorré**, Senior Deputy Commissioner of Competition, Mergers Branch **Sally Southey**, Assistant Commissioner, Communications Branch	February 10, 2005
Credit Union Central of Canada	**Jack Smit**, Chairperson, Board of Directors **Joanne De Laurentiis**, President and Chief Executive Officer	April 13, 2005
Department of Finance	**Gerry Salembier**, Director, Financial Institutions Division **Beth Woloski**, Chief, Consumer Issues, Financial Institutions Division **Manuel Dussault**, Senior Economist, Consumer Issues, Financial Institutions Division **David Smith**, Economist, Consumer Issues, Financial Institutions Division	November 18, 2004
Department of Finance	**Gerry Salembier**, Director, Financial Institutions Division, Financial Sector Policy Branch **Diane Lafleur**, Director, Financial Sector Division, Financial Sector Policy Branch **Beth Woloski**, Chief, Consumer Issues, Financial Institutions Division, Financial Sector Policy Branch **Terry Winsor,** Chief, Intergovernmental Issues, Financial Sector Division, Financial Sector Policy Branch	May 5, 2005
Equifax Canada Inc.	**Richard A. Cleary**, President **Joel Heft**, Vice-President, Legal Counsel and Chief Privacy Officer	April 13, 2005
Financial Consumer Agency of Canada	**Bill Knight**, Commissioner **Susan Murray,** Director, Consumer Education and Public Affairs	February 9, 2005
Financial Consumer Agency of Canada	**Susan Murray**, Director, Consumer Education and Public Affairs	October 27, 2005
General Insurance OmbudService	**Lea Algar**, Chairperson **Pierre Meyland**, Independent Director, Québec	March 10, 2005

Industry Canada	**Michael Jenkin**, Director General, Office of Consumer Affairs	May 5, 2005
Insurance Brokers Association of Canada	**Ken Orr,** Chair of the Board **Francesca Iacurto**, Director of Public Affairs	April 21, 2005
Insurance Bureau of Canada	**Randy Bundus,** Vice-President and General Counsel	November 3, 2005
Insurance Bureau of Canada	**Stanley I. Griffin**, President and Chief Executive Officer **Mark Yakabuski**, Vice-President, Federal Affairs and Ontario	April 21, 2005
Investment Dealers Association of Canada	**Joseph J. Oliver**, President and Chief Executive Officer	April 14, 2005
Investment Dealers Association of Canada	**Paul Bourque**, Senior Vice-President, Member Regulation **Louis Piergeti**, Vice-President, Financial Compliance	June 8, 2005
Investment Funds Institute of Canada	**Tom Hockin**, President and Chief Executive Officer	April 14, 2005
Mutual Fund Dealers Association of Canada	**Larry M. Waite**, President and Chief Executive Officer	April 14, 2005
Office of the Privacy Commissioner of Canada	**Heather Black**, Assistant Privacy Commissioner **Patricia Kosseim**, General Counsel **Anne Rooke**, Deputy Director General, Investigations and Inquiries Branch	February 16, 2005
Office of the Superintendent of Financial Institutions	**Nick Le Pan**, Superintendent	February 10, 2005
Ombudsman for Banking Services and Investments	**Michael Lauber**, Ombudsman and Chief Executive Officer **Peggy-Anne Brown**, Chair of the Board of Directors	March 9, 2005
Ombudsman for Banking Services and Investments	**David Agnew,** Ombudsman and Chief Executive Officer **Brigitte Boutin,** Deputy Ombudsman	September 29, 2005
Ontario Securities Commission	**David Brown**, Chair **Wendy Dey**, Director Communications	June 16, 2005
Option consommateurs	**Isabelle Durand**, Counsel, responsible for budget services **Jacques St-Amant**, Analyst	May 4, 2005

Property and Casualty Insurance Compensation Corporation	**Paul Kovacs,** President and Chief Executive Officer **Jim Harries**, Vice-President, Operations	May 4, 2005
Public Interest Advocacy Centre	**Sue Lott,** Counsel	February 16, 2005
Reinsurance Research Council of Canada	**André Fredette,** Chair	November 3, 2005
Royal Canadian Mounted Police	**Chief Superintendent Peter M. German**, Director General, Financial Crime **Superintendent J.R. (John) Sliter**, Director, Integrated Market Enforcement Branch, Federal and International Operations	May 18, 2005
Royal Canadian Mounted Police	**Chief Superintendent Peter M. German**, Director General, Financial Crime **Superintendent J.R. (John) Sliter**, Director, Integrated Market Enforcement Branch, Federal and International Operations	June 16, 2005
Small Investor Protection Association	**Stan I. Buell**, Founder and President	April 14, 2005
TransUnion of Canada Inc.	**Ken Porter**, President **Chantal R. Banfield**, General Counsel	April 13, 2005

APPENDIX B: CONTACT INFORMATION

1) Financial Consumer Agency of Canada

Telephone
(Information officers are available from Monday to Friday, 8:30 a.m. to 6:00 p.m., Eastern Time)

1-866-461-FCAC (3222) (toll-free, English)
1-866-461-ACFC (2232) (toll-free, French)
613-996-5454 (Ottawa area)

Facsimile

1-866-814-2224 (toll-free)
613-941-1436 (Ottawa area)

Mail

Financial Consumer Agency of Canada
427 Laurier Avenue West, 6th floor
Ottawa, ON K1R 1B9

Internet

http://www.fcac-acfc.gc.ca

2) Ombudsman for Banking Services and Investments

Telephone

1-888-451-4519 (toll-free)
416-287-2877 (Toronto area)

Facsimile

1-888-422-2865 (toll-free)
416-225-4722 (Toronto area)

Mail

OBSI
P.O. Box 896
Station Adelaide
Toronto, ON M5C 2K3

Internet

http://www.obsi.ca

General Insurance OmbudService

Telephone	1-877-225-0446 (toll-free)
Mail	GIO 10 Milner Business Court Suite 701 Toronto, ON M1B 3C6
Internet	http://www.gio-scad.org

Canadian Life and Health Insurance OmbudService

Telephone	1-888-295-8112 (toll-free, English) 1-866-582-2088 (toll-free, French) 416-777-9002 (Toronto area, English) 514-282-2088 (Montreal area, French)
Facsimile	416-777-9750
Mail	CLHIO 20 Toronto Street Suite 710 Toronto, ON M5C 2B8
Internet	http://www.clhio.ca

Even though the Centre for the Financial Services OmbudsNetwork has been wound up, the following contact information continues to give access to the consumer redress system:

Telephone	1-866-538-3766 (toll-free, English) 1-866-668-7273 (toll-free, French) 416-777-2043 (Toronto area, English or French)
Internet	http://www.cfson-crcsf.ca/