

# Proceedings of the Standing Senate Committee on Banking, Trade and Commerce

## Issue 1 - Evidence - Meeting of November 18, 2004

---

OTTAWA, Thursday, November 18, 2004

The Standing Senate Committee on Banking, Trade and Commerce met this day at 11:05 a.m. to examine and report on consumer issues arising in the financial services sector.

**Senator Jerahmiel S. Grafstein** (*Chairman*) in the Chair.

[*English*]

**The Chairman:** Honourable senators, I wish to welcome everybody. We welcome our TV viewers from across Canada. We have convened today to commence the Standing Senate Committee on Banking, Trade and Commerce study on consumer issues in the financial services sector. Banking is more than just buying and selling money, it is about consumer confidence in the financial system. It is about more than that. It is about keeping the economy strong and growing. The committee believes that Parliamentary oversight is integral to public confidence in the financial system and safeguarding the interests of all consumers. This is a longstanding concern. It was back in 1933 that the Royal Commission on Price Spreads first raised the issue of consumer confidence as one responsible aspect of government policy. We have come a long way in those 70 years and, senators, four years have now passed since the government introduced new consumer protection provisions in the financial services sector through Bill C-8. What we have proposed to start today, and continue in the weeks to come, is to review the framework that was established in 2001 and to see what is working, what is not, and what we can do to make things work better in the interests of all Canadians.

Our first witnesses are from the Department of Finance. Our first witness, Mr. Salembier — with great expertise — is Director of the Financial Institutions Division at the Department of Finance. He is well known to this committee. This group, as I understand it, is responsible for the design and implementation of legislation and policy frameworks for the financial sector. I ask Mr. Salembier to introduce the other members of his group and give us some of their backgrounds before he starts his evidence.

**Mr. Gerry Salembier, Director, Financial Institutions Division, Department of Finance:** Honourable senators, thank you for the opportunity to come before this committee again to speak on the subject of the financial sector regulatory framework. My

colleagues and I at the Department of Finance have spent a great deal of time and effort on the design and implementation of the framework. We are very proud of the work that we have done and the results it has achieved. This is a great opportunity for us to explain our perspectives on it to you. First, let me introduce my team. Beth Woloski is the Chief of the Consumer Issues section. That section was developed around the time of Bill C-8 to be responsible specifically for the development of policies and the provision of advice on consumer protection matters in the financial sector. I can say with some confidence as well that that section is also a principal point of contact for individual Canadians with the Department of Finance on matters pertaining to consumer protection. The cards, letters and phone calls that come through Ms. Woloski's section are numerous and they do a great job in helping Canadians with the issues that they have with respect to financial services.

*[Translation]*

Manuel Dussault also belongs to Beth Woloski's section. He is mainly in charge of issues that deal with access to banking services. The regulations that currently apply in the financial sector were developed by Manuelé. This is one of the great success stories of our consumer protection policy in financial services.

*[English]*

David Smith is also a member of Ms. Woloski's section. He is responsible for matters pertaining to debit card issues. There is a code of conduct on debit card services that we developed in conjunction with the industry and that we are in the process of bringing up to date. Mr. Smith is also responsible for liaising with some of the other organizations and agencies that are involved in the financial sector policy regulatory framework, some of which I will get into in my presentation today.

Let me start by noting that we recognize in our work at the Department of Finance that financial services play a truly vital role in the lives of individual Canadians and in the operation of our economy. Whether it is in banking, insurance, investing or financial planning, all across the country, consumers and governments depend on the products and services provided by our financial institutions. We have been asked to speak here today on a particular area of consumer protection and the federal legislation and initiatives of the financial services sector in that area. It would be useful to set that discussion in its proper, broader context. I will spend some time in my presentation on describing the different actors in the financial sector regulatory framework in respect of policy making, regulation and supervision. I will also set out an overview of the regulatory goals and the structure of that regulatory system and provide some background on the most recent round of changes to the financial sector regulatory framework that were brought forward in Bill C-8, with which members of this committee will be familiar.

I will then turn for the bulk of my presentation to the specific principles and initiatives with regard to the empowerment and protection of consumers in the financial sector.

Generally, at the highest level, the primary goals of financial sector regulation are to maintain the stability of the financial system, to provide a framework within which consumers have access to the highest possible standard of quality and service, and to maintain the integrity of financial markets. Government policy aims to pursue these goals in such a way as to provide an efficient and effective framework whereby institutions that provide these services can grow and prosper.

The next slide shows the principal actors involved in the policy making, regulation and supervision of federally regulated financial institutions in Canada, and in the overall financial sector. Each of these plays different and complementary roles. I will discuss each in turn.

I should also give a brief description of the federal role and responsibility in relation to other levels of government in the financial sector. Basically, constitutional jurisdiction over consumer protection is shared between the federal and provincial governments. It depends very much on the financial institution in question and on the activity that is being carried on by that institution. The federal government has exclusive authority over banks and shares authority over federally incorporated trust and loan and insurance companies.

In general, the provinces have the jurisdiction to regulate the day-to-day business activities of federally incorporated non-bank financial institutions, such as insurance companies and trust companies. Other financial service providers, including provincially incorporated trust companies and insurance companies, credit unions, mutual funds and securities dealers, generally fall under the day-to-day responsibility of provincial regulators.

Turning back to the principal actors on the federal side in the policy and regulation-making framework, first, the Department of Finance, from which we all hail, has a principal role in providing policy analysis on Canada's financial sector and on the regulation of federally regulated financial institutions to which I just referred. The department also develops and evaluates the current policies in place in the regulatory framework and provides advice on that to the Minister of Finance. We also spend a good deal of our time liaising with the other organisms and authorities that are active in the regulation of the financial sector.

*[Translation]*

The second organization in the Financial Consumer Agency of Canada is in charge of regulating federal financial institutions with regard to provisions for consumers in the federal financial institution legislation. The agency is accountable to the Minister of Finance, and its mandate is defined in the legislation. The agency's mission is to ensure compliance with provisions for consumers in the legislation dealing with financial institutions.

Second, the agency is also in charge of monitoring the implementation of voluntary codes of conduct and public commitments made by financial institutions to consumer protection.

Third, the agency's mission consists in raising consumer awareness and promoting understanding of the financial services sector, and of the obligations of financial institutions, as set out in the provisions of the act that deal with consumers. Further, the agency also assists consumers with inquiries and with finding the organization to which they should direct their complaints.

The Office of the Superintendent of Financial Institutions is the primary prudential regulator and supervisor of federal institutions and pension funds. The office answers to the Minister of Finance. It conducts examinations of transactions such as incorporations, acquisitions, mergers and dissolutions. The office enforces the legislation and the trade standards that govern financial institutions. It monitors the financial status of these institutions, and it also carries out inspections and deals with institutions that have problems. Since the Financial Consumer Agency of Canada was created, the Office of the Superintendent is no longer in charge of monitoring provisions that deal with consumers in federal legislation.

*[English]*

The Canada Deposit Insurance Corporation issues deposit insurance policies to all federal deposit-taking institutions as well as some provincial institutions. It also reports to the Minister of Finance. It promotes standards of sound business practice, monitors the financial condition of institutions and reports on any troubled financial institution.

The CDIC also handles the takeover and liquidation of troubled financial institutions, should that become necessary. As a Crown corporation, it has a legislated board that includes members from, basically, the other agencies involved in the framework — the Department of Finance, OSFI, Bank of Canada and the Financial Consumer Agency.

In the 2004 budget, the government stated that it is seeking views on how best to address any overlap or duplication between the prudential, administrative and corporate services functions of CDIC on the one hand and OSFI on the other.

Last, but certainly not least, the Bank of Canada is the primary systemic regulator in the financial regulatory framework. It sets monetary policy in Canada. It has the primary responsibility for financial system stability. It issues paper currency, as we all know, and acts as the lender of last resort to the banking system. The bank is the fiscal agent for the Government of Canada and oversees the clearing and settlement system for payments instruments.

The different actors involved in the financial sector framework have to work together. More specifically, we have two mechanisms for the exchange of information and the conduct of consultations between these agencies. Principally, this happens through two

committees, the first of which is the Senior Advisory Committee, or SAC, whose membership is described on the slide, the four agencies in question. The SAC has a mandate for the discussion and debate of initiatives to develop policy for the financial sector.

The second such committee is the Financial Institutions Supervisory Committee, or FISC. This committee is provided for in legislation as a statutory mandate. It has the same membership as the SAC but with a different mandate and a different chair. As you can see on the slide, it is the superintendent who chairs this committee. It is charged with dealing with issues related to financial stability and with any questions related to troubled institutions, should that become necessary.

I would like to turn now to the most recent set of changes to the financial sector regulatory framework. These are the ones whereby the principal developments relating to consumer protection were brought into force. This was a process that began quite some time ago, with the Task Force on the Future of the Canadian Financial Services Sector, which was a group composed of private sector experts and interested citizens, and which had a small research staff. That task force reported in 1998. It became known as the MacKay task force, after Harold MacKay, the chairman at the time of this report.

The report of the task force was reviewed by two parliamentary committees, including this committee. In the course of their review of that report, those committees conducted extensive public consultations and presented the government with their own recommendations.

That consultation process led to the emergence of a broad consensus on a need for measures to improve the regulation of the sector. That provided the foundation for the June 1999 paper released by the government entitled, "Reforming Canada's Financial Services Sector, A Framework for the Future." That 1999 policy paper was the basis for what became Bill C-8.

Bill C-8 was introduced in June 2001 and came into force in October 2001.

*[Translation]*

Bill C-8 contained several measures based on four basic principles. First, to promote the sector's efficiency and growth, to favour internal competition, to improve the regulatory framework and to give more power and protection to consumers. Given today's agenda for this committee, which is to study issues that concern consumers in the financial services sector, let me focus my comments on what federal legislation has done not only to protect consumers but also to inform them and thus to provide them with the tools they need to deal with their financial institutions. The development of consumer policy must be seen in the broader context, as I said, of the development of financial policy. Consumer policy is part of a balanced approach to regulating the financial sector.

Consumers can benefit from a healthy and competitive financial sector with a consumer protection system that is efficient and also helps to maintain an acceptable balance between the consumers and providers of financial services. The government took important steps to ensure that all Canadians enjoy fair access to banking services, and that credible and accessible mechanisms for remedy are implemented, and that there be an accountability framework. Although some were in favour of a system such as the Community Reinvestment Act in the United States, the MacKay Task Force did not think that the problems that led to setting up such a system in the United States existed in Canada.

Thus, the government chose a different approach based on disclosure and on encouraging competition; together, these are the pillars of the Canadian financial sector policy.

[*English*]

In terms of oversight, which was one of the principal objectives of the reforms to the consumer protection framework that were introduced in Bill C-8, we established for that purpose the Financial Consumer Agency, by statute, to oversee consumer interests. The agency reports to Parliament through the Minister of Finance and has a mandate to administer the federal consumer protection legislation in the area of financial services, as well as to monitor and report on the industry's compliance with the federal legislative requirements and with voluntary industry initiatives.

In creating this agency, our objective was to consolidate and strengthen the existing activities within the federal government that were spread across a number of different entities.

[*Translation*]

Through its compliance framework, the agency ensures that financial institutions comply with consumer provisions in federal legislation and respect the voluntary codes of conduct adopted by the industry. If a financial institution breaks the law, the agency can issue violation notices, impose financial penalties or publish the violator's name. In addition to these compliance activities, the agency provides information to consumers on how the financial systems work and plays a front-line role in educating consumers through publications such as *Credit Cards and You*, and *Cost of Banking Guide*. It also provides one-stop shopping for consumers looking for information on financial services by answering consumer requests for information and helping consumers who wish to complain about financial services by referring them to other appropriate bodies as required.

As I already mentioned, disclosure is one of the two cornerstones, the other being the consumer protection policy. It is based on the idea that consumers should have access to clear information so that they can exercise choice in selecting a financial service provider. This is why our legislation requires the dissemination of information through the regulations. The institutions must disclose their cost of borrowing, interest, deposit

account fees, their policies on holdback fees for cheques and their process for dealing with complaints.

The legally required disclosure, in combination with the agency's education tools, allow consumers to be better aware of the financial services contract provisions, so that they can make informed decisions.

Sufficient information as well as an array of appropriate choices supported by strict regulatory oversight and an effective appeals process guarantee more balance in the relationship between consumers and providers of financial services.

Ultimately, this allows consumers, businesses and the economy overall to optimize their results.

*[English]*

The policy framework for the sector also deals with redress. That is, the right of consumers to have their complaints about any services they receive heard, regardless of whether those complaints have to do with a potential violation of the financial institution statutes. The legislation contains a permissive provision giving the Minister of Finance the power to designate a dispute resolution system, of which banks would be required to be members. It also indicates, for non-bank financial institutions, that they must be members of some third-party dispute resolution system where the laws of a province do not require them to be.

After establishing this provision in the legislation, the financial services industry responded by itself establishing the Centre for the Financial Services OmbudsNetwork, or CFSON. The boards of the network, like the individual services, have a majority of independent members. CFSON is an umbrella organization. It provides consumers of the banking, life insurance, health insurance, property and casualty, securities and mutual funds industries with a single-window access to a network of individual industry-level ombudservices. The mandate of the CFSON really boils down to two things: consumer assistance and referral to the appropriate individual industry ombudservice, and the development and promotion of industry standards and best practices for the conduct of ombudservices.

Let me describe briefly how the complaint resolution system works in practice from the point of view of individual Canadian consumers. I will use the example of a bank, an institution with which we deal most frequently. The first point of contact for a consumer is the branch manager of the bank in question. If the branch manager is unable to resolve the consumer's complaint, the consumer can then take it up with the bank's customer service centre. If the complaint is still outstanding, the consumer can raise it with the bank's internal ombudsman. Each bank has a designated person who acts in the role of ombudsman for that bank. If the internal ombudsman cannot resolve the complaint to the consumer's satisfaction, the consumer can make an appeal to the independent industrial-level ombudsman, which, for the banking sector, is the Ombudsman for Banking Services

and Investments. They also deal with investment securities dealer complaints. All of that operates in parallel with, and without prejudice to, the courts. Consumers always have access to the courts as a means of resolving any contractual problem they have with a financial institution.

Finally, if a consumer who has gone through the industry-level ombudsman services feels that ombudservice has not followed proper procedures in handling the case, then the consumer can have access to the Centre for Financial Services OmbudsNetwork in order to explain how they feel about that, namely, that their complaint has been inadequately dealt with. That is how the system works for Canadians in general.

As a point of contact for ourselves in the Department of Finance for individual Canadians who have had difficulty with their financial service providers, the existence of this OmbudsNetwork does work well as a means of effectively dealing with the complaints of consumers.

*[Translation]*

I would now like to present a few aspects of the regulatory framework dealing with access to financial services. The Banking Act gives the government the power to take regulatory steps to encourage banks to offer accounts for nominal fees. In this area, the banks have undertaken self-regulatory steps in order to offer such services. The government has no plans to take regulatory steps for the moment. The eight largest financial institutions have signed agreements with the public according to which they will provide low-cost accounts to their customers. These accounts must respect certain guidelines that we negotiated with these eight institutions. The guidelines deal with the following: no fees on deposits, the use of a debit card, 8 to 15 debit transactions per month, of which at least two can be used within the branch, and monthly fees that amount to four dollars at most, a maximum of four dollars per month.

*[English]*

The second main element of the framework pertains to access centres on the access to basic banking services regulations. These came into force in September 2003. These regulations require banks to open accounts and to cash federal government cheques for any individual who meets certain basic identification requirements. The idea here is in fact to legislate the key elements of what was a voluntary agreement with the banking sector struck in 1997, which the government felt had not been sufficiently respected. We therefore took steps to use the regulation-making authority provided in the law to put in place a regulation in this particular instance.

*[Translation]*

Third, the government is well aware of the importance of the issue of access to bank branches for all Canadians. This is why we have created legislation setting out the procedures that banks must follow before closing a branch. Even though it is not

advisable for the government to dictate the services that a private company is required to offer at a given location, the legislation requires that the banks give at least four months' notice before closing a branch.

The purpose of this requirement is to give affected communities the time to explore other options for financial services in those communities. In addition, if the bank has not consulted those communities enough, the agency can require it to meet with interested parties to hear their position on the closure of that branch.

*[English]*

Let me turn now to the heading of "Accountability." As I mentioned, although the MacKay task force did not find the need for a regime in Canada equivalent to that in the United States, it felt that the level of transparency and communication in financial institutions in Canada could nevertheless be improved. Therefore, it recommended that there should be greater disclosure and transparency with respect to the performance of financial institutions in meeting the expectations of communities in Canada.

The government decided to require all financial institutions with equity of greater than \$1 billion to prepare a public accountability statement describing the institution's contribution to the Canadian economy and society. These are published annually and monitored by the Financial Consumer Agency.

I would like to take a few minutes to describe the details of the public accountability statements. I promise we are almost done.

The regulation is not prescriptive of the content, but rather it sets out a number of minimum requirements and asks for detailed examples of how they are met. The key pieces of information that are required to be in each institution's public accountability statement are: the total dollar value of their charitable contributions, the total amount of money authorized for debt financing by size of business — it is the same as the concerns over the availability of small-business information — the location of branches and other points of service that have been opened and closed, the number of persons employed and the taxes paid.

Those are the pieces of information that are required in the public accountability statements, but a key component, and one in which we take great pride, is the definition of "community development" in the public accountability regulations. This is intended to be quite broad and includes all of the major threads of sustainable development and corporate social responsibility reporting. Financial institutions now use these public accountability statements to differentiate themselves in the minds of individual Canadians and in the minds of investors. We expect, with each successive round of public accountability statements, to see this kind of competition amongst the institutions have quite a beneficial effect in terms of the information that is available on community development activities.

*[Translation]*

Finally, by way of conclusion, I would like to underscore, once again, the two key components of the financial services consumer policy: disclosure and competition. Both of these components work together to reach the ultimate goal of providing affordable and innovative financial products and services to consumers. The Financial Consumer Agency of Canada, ombudsman services and provisions of the regulatory framework constitute the government's approach to reaching this important objective.

*[English]*

We are available for your questions and for discussion.

**The Chairman:** Thank you very much. We have a long list of senators who want to question you. I hope that the senators will show restraint in order to include everyone in a first round, and perhaps limit themselves to three or four minutes.

*[Translation]*

**Senator Plamondon:** I want to thank you for your presentation. Having been involved, as you know, before becoming a senator, in the development of the debit card code, and having taken part in the establishment of the Centre for the Financial Services OmbudsNetwork, as well as having been consulted for the MacKay report and Bill C- 8, I would like you to tell me whether the path taken meets your expectations, in particular with respect to access to credit at reasonable rates, clear information in contracts, and also whether we are in the position, despite the notice for branch closures, of having more cities without financial institutions.

*[English]*

**The Chairman:** I would ask the witnesses to be as precise as possible to enable us to ask as many questions as possible. I do not want to interrupt the flow, but it is important to advise you that we are under some time constraints.

*[Translation]*

**Mr. Salembier:** With respect to your first question about access to reasonable credit, we are of the view that the competition and wide array of financial service providers now provide enough products and services accessible to Canadians and that these contain the information that Canadians need in order to make an informed decision. For example, on credit cards, one of the most important issues for a large number of Canadians, who generally hold credit cards, we now have over 600 different products available. Some include credit cards at reasonable rates, in some cases, rates as low as 2 per cent above prime. In relation to this array of 600 products, Canadians, with the information and tools created by the Financial Consumer Agency, 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.

In terms of branches, there certainly were many branch closures in years past. In our opinion, we have a regulatory framework that includes the necessary provisions for communities in a situation of limited access to financial services resulting from a branch closure; they can now explore other options for financial service providers, with the four-month minimum notice period and the opportunity to meet with the bank that is closing the branch, before the closure takes effect.

**Senator Plamondon:** How do you explain the growth in alternative credit? How do you explain the fact that finance companies continue to offer contracts with credit rates of 50 per cent? How do you explain the fact that in areas where financial institutions have closed, even if an automatic banking machine remains, if it is no longer profitable, it too is closed? And contracts are not as clear as the MacKay task force would have liked.

**Mr. Salembier:** It is true that financial services contracts are complicated. But we also have, in the cost-of-borrowing regulations, a requirement that contracts be drafted in plain language. That provision is monitored by the agency. It is responsible for, and has taken action to that end in the past, ensuring that contract language is truly plain enough for consumers.

The committee might like to ask officials from the agency to discuss their activities in greater detail. That question would be appropriate for the officials responsible, who are exposed to consumer complaints daily.

[*English*]

Excuse me. The payday lending operations you referred to are, by and large, not subject to federal regulation. These are not federally regulated financial institutions. They are, however, regulated by provincial governments. Discussions are underway between federal and provincial governments right now, looking at the emergence and the ongoing development of the payday lending sector.

The principal federal law applicable in these situations is the criminal rate of interest defined in the Criminal Code, the 60 per cent maximum. That is the responsibility of law enforcement agencies to address.

**Senator Angus:** Mr. Salembier and your team, I give you a warm welcome. It is good to have you with us as we start a new session, working together.

As you know, there were mixed views from this committee at the time with regard to Bill C-8. It was a massive tome of legislation dealing with so many subjects. Many of us had trouble with it. I have had feedback from some of you about my own speech on the bill in the Senate. In any event, it is what it is and it is part of our legislation, and we are

focusing on the consumer protection elements thereof. I do not think we had any particular criticism, frankly, of those at the time.

Your overview this morning was very helpful and the way you presented it was clear. However, it does demonstrate, even in this short time that you spoke to us, how complicated it is, with a web of committees and organizations and so forth. Obviously, the first question is, is it working? You have not had long to get it in place and set it up, but from a consumer's point of view, is it your sense that these measures have been well received and that they are functioning properly?

**Mr. Salembier:** I would say yes, you are correct, senator, to point out that there has not been that much time. In the usual stream of program evaluation of government programs, three years is not a long time, but I can say that in terms of the day-to-day contact we have with Canadians, it really does help someone facing a problem. These are often heartrending stories — I am sure you have heard them as well — about people who are affected by actions of financial institutions. 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. I can say as well that when it comes to credit cards, the entries into that industry in recent years and the innovations, including the introduction of low-interest credit cards, are very positive developments. We now have a situation where credit card companies actively compete through low-interest cards and seek out consumers who are looking to reduce their debt-service levels by moving to a lower-rate card. There is now a meaningful opportunity to do that because of the competition out there.

Perhaps you will have representatives from the consumer agency speak in more detail about their consumer publications, but the credit cards and new publications to which I referred earlier are valuable tools. It makes a great deal of difference to be able to point Canadians in the direction of something that clear, simple and up to date that can help with their financial services needs.

**Senator Angus:** You highlighted in your presentation the need for efficient cooperation among the regulatory agencies. The feedback I get is that there is so much cross-fertilization, if you will, between these agencies that often the consumer does not know which one to turn to. You mentioned these two big high-powered committees, one chaired by the Deputy Minister of Finance and another chaired by the superintendent from OSFI. Did those committees exist prior to Bill C-8? Are they not longstanding committees?

**Mr. Salembier:** Yes, both existed prior to Bill C-8.

**Senator Angus:** We do get feedback, and often it is folklore and many times wrong, that there are tensions between OSFI and your department, as an example. How is that going? Is it working well on the regulatory side?

**Mr. Salembier:** Yes, I must say it is. I think it is natural and, in fact, even intended that there be tensions between the various agencies responsible. In part, that is a product of

the fact that they have different mandates. Between the principal agency, the Department of Finance, which is responsible for developing changes to the policy framework, and agencies that are responsible for implementing the existing policy framework, the concerns relating to the potential complications and difficulties of implementing those changes will be the subject of discussion and maybe even tension. I think that is properly so. That is why we have formalized the process for consultation and exchange of information between these agencies through these two committees.

**Senator Angus:** I understand why, and I think it is a terrific initiative. Of course, you also highlighted the problem we have in this country, with these provincial and federal jurisdictions and concurrent jurisdiction. I will just use one example. It seems to me that one big issue that is of concern to consumers involves the insurance industry, which is an industry built on the so-called utmost good faith and confidence of the policyholders. They must have confidence in the insurers. It is front page news everywhere, and every day I read in the Canadian press, that a different body seems to be sticking their nose into it. It must be of concern at your level. What is being done about this issue that has been raised by Attorney General Spitzer?

**Mr. Salembier:** I suppose it would not be Canada if there were not some federal-provincial dimension to this issue. There certainly is, in all financial services areas, a dimension of federal-provincial division of responsibility. This is particularly so, as I pointed out in my opening remarks, in the case of insurance. Although the federal government has the powers of incorporation and the federal Insurance Companies Act exercises those powers, the principal responsibility for the supervision of the day-to-day market conduct of insurance companies tends to fall to provincial governments. In the case of a problem such as the one Eliot Spitzer is dealing with in the United States, it would, in general, fall to the various provincial government supervisory authorities, such as the financial institutions' supervisory commission of Ontario. I know they are investigating this matter.

We follow these proceedings in other countries — in the United States, most obviously — quite closely from the point of view of informing ourselves of the conditions of operation of companies in the sector, such as Canadian companies, for example, active in the United States, although I am not aware that they have been directly affected by this. It could be at some point we will have to respond to these kinds of concerns. We actively monitor these developments, but it is not principally a federal government responsibility to deal with issues relating to insurance broker commissions and the disclosure of such commissions, which I understand to be the main focus of Mr. Spitzer's lawsuits.

**Senator Angus:** I do not want to prolong this. You mentioned this general insurance ombudsman. Is that provincial?

**Mr. Salembier:** That is an industry initiative that forms part of the Centre for the Financial Services OmbudsNetwork. It also fulfills the requirements for federally incorporated property and casualty companies to be members of a third-party dispute resolution system.

**The Chairman:** We will have an opportunity to review that with that ombudsman.

**Senator Harb:** The Canadian Deposit Insurance Corporation insures deposits in financial institutions up to a certain limit. Can you tell us what that limit is?

**Mr. Salembier:** That limit is currently \$60,000.

**Senator Harb:** When was that limit established and can you tell us whether or not you have any plans in the near future to revisit whether this limit is in fact sufficient in today's economy?

**Mr. Salembier:** I cannot tell you offhand when it was established, but I think you are correct to point out that it was some time ago. We do not have at this point plans in place to change the \$60,000 limit. Any change to the limit would of course have cost consequences. Those consequences would end up being borne by consumers, in all likelihood. The \$60,000 limit, in our estimation at this point, is fair and appropriate and does cover the bulk of Canadians' deposits with financial institutions in Canada.

**Senator Harb:** As part of your mandate you manage the debt and also look at international reserves in conjunction with the Bank of Canada. What is the amount of the reserve? Are those reserves held in U.S. dollars or in euros? If they are in U.S. dollars, is there any plan, for example in light of the slide that has taken place with the U.S. dollar, to move part of that reserve to euros? Is there any thought along those lines?

**Mr. Salembier:** I will defer to my colleagues in other parts of the Department of Finance. As many of you are probably aware, we are very specialized group. I have prepared myself today on these matters of consumer protection, but do not actually have responsibility for the exchange fund account or Canada's reserves policies.

**The Chairman:** We will have the governor of the bank here with us next week. That would be an opportune time to address that and it puts the governor on notice that these are questions that will be asked.

**Senator Harb:** They do manage as well as —

**The Chairman:** I agree, but we are trying to focus on the consumer aspect of this. Is it related to the consumer aspect?

**Senator Harb:** I thought it was directly related to that because the amount of debt and reserve, and the way it is handled, of course, have a direct impact on consumers. My final question deals with your legislative requirement. Looking at the Canadian economy, at all of the industries, one cannot help but notice that the banking sector is still the only sector of the economy that has legislative federal requirements. Other sectors do not have those kinds of requirements. Why? Has your department had a chance to look at other jurisdictions, for example OECD members, to see what they have done, because we have

evolved to the point where we wanted to perhaps loosen the leash, if it is a leash, or review the way we conduct ourselves in terms of our industries?

**Mr. Salembier:** The fundamental rationale for the regulation of the financial sector compared to most other sectors of the economy is that there is an issue of potential systemic confidence. Canadians, as with depositors in any country, have an interest in ensuring the stability of the institution that is holding their deposits. Confidence in that institution is the key to the entire financial system. Therefore, in Canada, as in virtually every other country, banks, in particular, and deposit-taking institutions in general, are subject to regulation for the purpose of ensuring confidence in the financial system. We do interact with other countries frequently at a variety of levels, from the OECD through the Bank for International Settlements, the IMF World Bank, et cetera. Each of these organizations has its particular mandates, but I can point to, for example, a report from the IMF in 2001 that reviewed Canada's financial-sector regulatory system and gave it top marks as one of the sources of best practice for financial regulation from which other countries around the world can take example.

**The Chairman:** That is also in the OECD report on comparative banking systems and perhaps the Bank of Canada can make that available to us. It is an excellent study. Our next questioner is Senator Tkachuk from Saskatchewan. He is a long-serving and distinguished member of this committee and we welcome him and ask him to launch his questions.

**Senator Tkachuk:** Thank you for the presentation. I have a couple of questions on competition. We had hoped that smaller banks would buy branches that were viable, like the Laurentian or the Western, where the large banks had abandoned a particular market. That was one hope. Also, we had some hopes for the credit unions and the cooperatives entering the banking business. We have not seen legislation on the co-ops, which I think is required, but how is that going? Were we right in that assumption? Could you expand on that?

**Mr. Salembier:** There have been a number of transactions — and I will go back four years or so — in which smaller banks and credit unions have actually picked up a significant number of branches from the larger banks, including those in Saskatchewan and Alberta. In the case of the credit unions, they have picked up several dozen branches from one of the major banks. In Quebec also, one of the smaller banks has picked up a number of branches from one of the large banks. There has been some reshuffling of assets and points of delivery amongst the industry.

In terms of the credit union movement, we did make a number of legislative changes in Bill C-8 in order to provide opportunities for national service entities to emerge in the form of retail associations. Some regulations are in the process of being passed right now, and are actively under discussion with the credit union movement, that will further the desires of certain participants in that movement to create an entity that can offer financial services across borders.

One of the principal challenges one faces is that the credit union movement is highly democratic, and major changes, moves and strategic decisions have to flow from a consensus amongst the credit union members. We have to respond to that kind of a consensus. Therefore, our regulation making really has to be based upon, not a 100 per cent consensus, but a fairly broad degree of consensus. That takes time in a movement that is very democratically organized.

**Senator Tkachuk:** Is that the same problem with co-ops?

**Mr. Salembier:** Credit unions would be the principal financial cooperatives with which we are concerned.

**Senator Tkachuk:** What about new entrants? There was a lowering of equity requirements and some legislation to allow new entrants into the marketplace. Has that been successful? Have there been a number of new entrants; about how many would there be?

**Mr. Salembier:** There have been new entrants. In addition to lowering the minimum capital requirement, to which you referred, senator, we also allowed for the first time through Bill C-8 small banks to be closely held. That is, small banks with equity of less than \$1 billion. This is a sizeable bank and can now be 100 per cent owned, whereas prior to the bill, anyone who wanted to start a bank would, within 10 years, have to sell 90 per cent of it. That is not the kind of thing that encourages the average entrepreneur. We have removed that requirement, and since Bill C-8 was created, there have been a number of new entrants, including in Western Canada. Some very small institutions have been created there. 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. How many new entrants? I am looking for some signals from some colleagues in the room but I do not have the exact number on hand. I can get that for you.

**Senator Tkachuk:** We would like that.

**Mr. Salembier:** Half a dozen to one dozen.

**Senator Tkachuk:** This would provide us information on the co-ops, the credit unions and the new entrants and where we are on that. Most members of the committee would be interested in receiving that.

**The Chairman:** Could we not only have that information but also their capitalization and their reach across the country? It is important to see not only the entrants but their reach across the country.

**Mr. Salembier:** We can provide that information. One of the reasons we introduced that provision was the hope of seeing some actual entry, but probably what is more important is we are trying to improve what we call the contestability of the Canadian marketplace.

The possibility of new entrants has an impact on decisions of existing players — the large financial institutions, for example.

The threat of new entrants forces them to respond with product design and pricing decisions, of which we have seen a great deal in the past three or four years, and some of which you can attribute to that threat, particularly in areas like credit cards.

**Senator Tkachuk:** On the low-fee accounts, there was some discussion at that time about the number of people who did not have bank accounts. There was some discussion about the fact that perhaps they were deterred from having bank accounts. You spoke about the \$4 accounts and letters of commitment from the major banks. Has the percentage of people who do not have bank accounts lessened as a result of these or is it about the same?

**Mr. Salembier:** We do not have a study on hand that has examined that. It is actually quite a difficult number to get a fix on since the

“**unbanked**,” by definition, do not have a bank.

Therefore, you cannot actually get hold of information on their banking habits. It is certainly one of the research topics of interest to us. Money was provided for research into consumer matters in the financial sectors in conjunction with Bill C-8. It would be helpful if more research was done on that subject. We do not have that here for you today, though.

**Senator Tkachuk:** That information would be interesting. We acted on what we thought was statistical information and you are saying that no one since then has done any follow-up work as to whether that policy was working or whether the concerns are even valid in the first place.

**Mr. Salembier:** We were satisfied at the time that the concerns were valid. This is one of the areas in which we have not had sufficient time to put in place a program evaluation. We do, however, have the consumer agency in charge of monitoring these commitments to provide the low-cost accounts. That is something that the agency could, perhaps, inform you on in greater detail. These are public commitments for the purposes of the act.

**The Chairman:** Our next questioner is Senator Massicotte. He has not served long in the Senate but has made his mark in this committee. He comes to us with a distinguished business career and has served public sector interests. He was for a long time a member of the board of directors of the Bank of Canada and has served as the lead director in that area. We welcome his questions.

**Senator Massicotte:** Thank you, Mr. Salembier, for your presentation. I will go back to a point that Senator Angus made because I think you got off too easily. If you look at financial institutions in Canada, I think Canadians have a reason to be extremely

disappointed with the supervisory agencies — and I mix them up purposely — both federally and provincially. We look at the life insurance industry, where we discover that special commissions are basically incentives to funnel business to them, whereas the user is not even aware of that conflict of interest or incentive. We look at this morning's paper on mutual funds, where we find out that sophisticated investors were basically using market-timing transactions — *The Globe and Mail* talks about billions of dollars — obviously to the detriment of what I call the small investor.

In Quebec two months ago, there was a lot of publicity with respect to a wholly owned subsidiary of a major bank where the representatives were deemed to be independent, thereby giving advice on investments obviously favouring their parent company. Again, this was unknown to the investor, who thought that these were independent advisers. There are many examples. To the disappointment of consumers — and this is even more scandalous — we are finding out that the Americans are dealing with the same thing. Look at the insurance brokers; the same instance on the casualty side.

Obviously, there is something wrong and the consumer has a reason to be disappointed. For us to say, "It is a provincial responsibility, sorry," is unacceptable. If you took a poll of the confidence of Canadians today, they would say, "I am disappointed and I am therefore concerned with the integrity of our system." As you well know, when you put in question the confidence in or the stability of a financial system, it hurts the economy and it hurts all of us. You may say it is a provincial responsibility. However, if the issue is so serious, then the federal government should show leadership on this issue. There is obviously something fundamentally wrong. What is wrong and what are we doing to correct it?

**Mr. Salembier:** I will probably have to disappoint you once again, senator, although I may not get off as easily as I did before. Most of the areas that you referred to, in particular, life insurance and securities matters do tend at the moment to fall under provincial jurisdictions. The arrangements that are in place and the supervisory authorities that are charged with monitoring the kinds of things that you mention in life insurance and mutual funds are, by and large, in place at the provincial government level and not at the federal government level.

With respect to the securities industry, you are probably aware that we created a wise persons' committee to address the question of securities regulation in Canada. That committee recommended the creation of a single, national securities regulator. That is a recommendation that the federal government supports and which we are eager to discuss with the provinces, as to how to bring that about. Those discussions are ongoing. One of the reasons that we favour 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 to deal with situations such as the one that you point out.

Beyond that, senator, I am afraid there is not too much I can get into here in respect to the specifics of the insurance industry and mutual fund issues that you have raised.

**Senator Massicotte:** You mentioned a couple of instances. I can appreciate that mutual funds regulation is provincial, but looking at *The Globe and Mail* this morning and the negotiations of the OSC, I would urge you that something must be done federally, across Canada, to let each jurisdiction decide how best to deal with this. Otherwise, I think we will be losers as a country. I urge you to look at this and get involved.

Let me jump to a second question, on the issue of governance. Many reports have been published on governance. We have published our own report on governance. Obviously, your sector of importance is financial institutions. Are you pleased with the governance of banks? Would you say the fact that compensation for executives of banks is quite significant is a representation, or maybe governance is not good enough? Have all banks separated the presidency and the chairmanship role? Are you pleased with what is happening?

**Mr. Salembier:** I believe that all banks have now separated the chairman and chief executive officer role. I am looking for a signal from one of my colleagues. I think that is true.

As to whether we are pleased with the governance of the institutions, the federal financial institution statutes do contain a fully developed set of corporate governance requirements for banks, insurance companies, et cetera. It is the responsibility of OSFI to monitor those institutions. In addition, OSFI has set out a code of best practices — that is, corporate governance guidelines — which it expects institutions to have an eye to as they develop their own corporate governance practices.

On the issue of executive remuneration, that is the responsibility of individual shareholders, exercising the rights of shareholders, to bring to the attention of annual general meetings and boards of directors that represent their interest.

We have in progress a set of draft amendments to the corporate governance provisions of all the financial institution statutes to modernize those provisions. Those have been in development for some time. We do hope to be able to bring forward legislative amendments to modernize those corporate governance provisions in due course. That would address things like the rights of shareholders to bring specific issues forward, the communications that institutions have with shareholders and the most efficient means by which that information can be put into shareholders' hands. Those are all corporate governance matters that are addressed in the existing provisions of the statutes and some that we would look to modernize and update through legislation.

**Senator Massicotte:** Some countries have organized things so that a certain number of shareholders can basically make a comment on compensation. If I remember correctly, in the United Kingdom there is provision for comment relative to compensation for executives. Is that what you are looking at for the banks?

**Mr. Salembier:** We are not looking for a specified power for shareholders to bring that forward. The general powers of shareholders may well afford that opportunity. I would have to get back to you on the specifics of that. The corporate governance issue does fall, unlike the exchange fund account, within my area of responsibilities, but I must confess that I spent most of my time preparing for a session on the consumer protection provisions. I would be happy to return here with more information on the specifics of that, senator.

**The Chairman:** Our next questioner is Senator Fitzpatrick, a distinguished representative of the province of British Columbia. He has been, off and on, a long-term public servant as well as an activist in British Columbia and an outstanding business personality. We welcome him to this committee and we welcome his questions.

**Senator Fitzpatrick:** Mr. Salembier, I appreciate your presentation. You have an important function and I am sure you are doing a good job. Your responsibility is large and my concern is whether it covers everything. You mentioned payday lenders, and before I came here I pulled off the Internet the following message:

When you are in need of quick cash, Mr. Payday has got you covered. He provides fast and easy payday loans in Vancouver, British Columbia, Canada. Regardless of how you manage your money, there are always times when you might need a little help.

I could continue but I will not. The one thing it does not say is how much this costs the consumer. I know you indicated that this is a provincial issue, but what can this committee do to help have this kind of activity fall under an umbrella of supervision of the federal government? This kind of activity truly exploits those who are poor and may have difficulty managing their money. Perhaps such individuals are not even aware of the low-fee bank accounts that they could open. This is an area where people are being badly exploited.

**Mr. Salembier:** That is a good question, senator; what could be done at the federal level in respect of payday lending. At present, as I indicated earlier, the principal provision of relevance is the criminal rate of interest as set out in the Criminal Code. As I indicated, we are having some discussions with provincial governments to better understand what exactly is happening with the emergence of these payday lenders. You are certainly correct, because I can personally, anecdotally, testify to the fact that this industry seems to be growing by leaps and bounds. It has not escaped the notice of officials of the Department of Finance represented at this table today. On the first floor of the building in which we work there is not only a bank branch but also a payday lender.

**Senator Fitzpatrick:** Are they accepting government cheques?

**Mr. Salembier:** I have not taken my government cheque there so I do not know; it is a fairly recent development. The explosion of these payday lenders seems to be a fairly recent development, but I am speaking mostly anecdotally. We do not have a great deal of detailed information on where and how they operate.

One concern has been expressed mostly by provincial government representatives, who have been musing and thinking about a response to this development in the financial services industry. These providers occupy a place in the spectrum of financial service providers, at one end of which I suppose you could say there are the banks, although I would not say that the payday lenders are entirely at the other end of that spectrum. At the extreme end are the pawnbrokers, et cetera. Some places are, perhaps, less advantageous for lower-income Canadians to use as a source of financial service provision than payday loan outfits.

One thing we could do that I hope would 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, that bank accounts are available to them at a reasonable cost, \$4 per month, 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.

**Senator Tkachuk:** I have one quick follow-up question on that. Do any of our big six banks own any of these high-interest lending companies, either directly or at arm's length?

**Mr. Salembier:** There is at least one bank that had, at one time but perhaps no longer, an interest in a kind of alternative financial services provider. I believe that it was done in conjunction with one of the inner city NGOs in Toronto as a means to get people who would not normally approach a bank into one of the lower-cost providers. That was the nature of the initiative. With apologies, senator, I cannot tell you if that is still in place or whether it was successful.

**Senator Tkachuk:** It was a kind of charitable high-interest operation.

**Mr. Salembier:** The idea was that the interest charged would be less than the mid-30s range charged by some of these outfits.

**Senator Tkachuk:** That was interesting; and I think they do own a couple of them.

**Senator Fitzpatrick:** I suppose there is one thing you could do. You talked about consumer awareness, and the government could provide a stronger thrust in that direction. It is not the government's job to advertise on behalf of banks, at least those that do not have Mr. Payday organizations, but rather to advise consumers that there are alternative ways in which they can be serviced. Those ways may include low-fee accounts and the provision of financial information by your umbrella organization. I realize that may not reach the heart of this problem but perhaps it could be considered. I am not familiar with your promotional or educational information or how you communicate the services of the federal government.

**The Chairman:** Again, it would be interesting if you could provide us with details of your communication outreach to consumers. That would be useful for the committee to examine.

**Senator Plamondon:** You were speaking of amending the Criminal Code in respect of the 60 per cent ceiling on interest rates charged by the loan sharks.

*[Translation]*

Would the solution not be to amend section 347 of the Criminal Code to lower the 60 per cent rate that is deemed usurious?

**Mr. Salembier:** That provision is one of the most important provisions in federal legislation on that issue.

**Senator Plamondon:** Should it still be at 60 per cent, as that was set in 1981? And in 1981, the prime rate was over 20 per cent. How do you explain that?

*[English]*

**Mr. Salembier:** I think the government's view is that the 60 per cent rate is appropriate. Other jurisdictions have chosen different levels of interest rates and different ways of calculating them. There are questions as to what is included in the calculation of the 60 per cent rate. Some of those matters are difficult to resolve in other jurisdictions. Other countries have resolved them in different ways. I do not know that a change in the maximum rate of interest as set out in the Criminal Code would necessarily bring about a better result in terms of enforcement of the provision.

**The Chairman:** Our next questioner is Senator Hervieux-Payette, an outstanding counsel and advocate from the province of Quebec.

*[Translation]*

**Senator Hervieux-Payette:** I would like to know if there are more complaints about Internet banking than conventional banking.

**Mr. Salembier:** I have no idea whether there have been more complaints about Internet banks. That is a question that you might ask the Financial Consumer Agency. They are the complaint watchdogs. They have a call centre that gets tens of thousands of calls.

**Senator Hervieux-Payette:** Who establishes policy for these institutions that are set up? Have you had another look at the Canadian policy of the Office of the Privacy Commissioner? Since the Patriot Act was passed, data processing for Canadian banks in the United States is no longer protected by the Privacy Act. Furthermore, the same situation applies in reverse for American companies doing business in Canada, because it applies to them extraterritorially.

**Mr. Salembier:** We are certainly aware of the fact that some banks are in that situation. They have contracts with American companies for data processing in the United States. However the policies come under Industry Canada and the Office of the Information Commissioner and the Privacy Commissioner.

**Senator Hervieux-Payette:** My third question has to do with policy: Once the guidelines are established, who sets policy for the Office of the Superintendent of Financial Institutions to apply to insurance companies and banks? Because significant transactions are involved, who does the cost-benefit analysis, because at the end of the day, those guidelines represent a cost to the consumer? Is it you or the superintendent? If it is the superintendent, do you have any say?

When we studied Bill C-8, that was one of the committee's concerns: Who was going to pay? Certainly not the banks, because they have made huge profits. It is always the consumer who ends up paying. Since there are a lot of requirements for banks and insurance companies, who does the cost-benefit analysis and is that analysis available?

**Mr. Salembier:** In general, it is the responsibility of the agency that creates the guidelines to do its own cost-benefit analysis. When the Department of Finance develops ideas for changes to the regulatory framework, like for example the 2004 budget initiative to examine issues of interference and overlap between the Deposit Insurance Corporation and the Office of the Superintendent, we are the ones who consider the costs and benefits of various regulatory structures.

I suppose that you are talking about specific guidelines on equity levels or financial criteria.

**Senator Hervieux-Payette:** It is about 300 or 400 pages. It goes into administrative detail, and an army of OSFI staff study those requirements. There is a link with outsourcing, with the fact that the banks do indeed have data processed outside Canada. There is even a section dealing with that. Who has the last word? Do you all sit around the same table? Do you have any say? When it comes to the guidelines on outsourcing, do you have any say? Can data be sent to China, India or the United States for processing, where Canadian legislation may not be followed in relation to these Canadian financial institutions?

**Mr. Salembier:** The Office of the Superintendent of Financial Institutions, which is responsible for the guidelines that you are referring to, that is, the conditions under which a foreign company can be used for data processing, and the costs and benefits of such guidelines, in general, is responsible for assessing that.

The protection of personal information processed outside Canada involves other agencies, such as the Office of the Privacy Commissioner. It might be a good idea to ask those agencies if they have done any specific cost-benefit analyses of specific guidelines.

**Senator Hervieux-Payette:** My conclusion, Mr. Chairman, is that you were responsible for the new act, but in terms of the administration of the act, you do not oversee the implementation of various sections of the act that involve the various agencies tasked with their implementation. I thought that the Department of Finance had the last word, because there had to be some cohesiveness among all of these bodies. I find it bizarre that each one can change the regulations, intervene, without you at least having the power to coordinate and manage. Otherwise, it seems to me that the regulations pile up, always at the consumer's expense. There should be an authority, independent of these bodies, that determines which costs will be borne by the consumer for all of the statutory requirements on financial institutions.

[*English*]

**The Chairman:** A short response to that question, please, if you want to go on record with that.

**Mr. Salembier:** When it comes to the financial regulatory sector as a whole, the ultimate responsibility lies with Parliament.

**Senator Hervieux-Payette:** Regulations.

**Mr. Salembier:** They sunset every five years, so that is an opportunity to review at the greatest level of detail any of the provisions, including the authorities provided to the various regulatory agencies.

**The Chairman:** I think the senator also talked about regulation between the reviews. Do you want to talk about that? I believe that was the thrust of her question. Was it possible between the reviews for the government to utilize its regulatory power to mix and match when problems arise?

**Mr. Salembier:** I am afraid I do not have too much more to add on that one.

**The Chairman:** To be fair to the witness, that might need to go to a higher level. Perhaps we might think about that.

Our final questioner on our first round is Senator Moore. As you know, as our audience perhaps does not know, the Senate really represents the five regions of the country. We have heard from the East, the West, Quebec, and you will hear shortly from Ontario, but now we will hear from the Maritimes and the most distinguished senator from Nova Scotia, Senator Moore, who is a long-serving member of this committee and has provided excellent work. Senator Moore.

**Senator Moore:** Thank you, chair.

My question relates to the previous question from Senator Hervieux-Payette. In your presentation, Mr. Salembier, you mentioned that the Financial Consumer Agency of

Canada was to promote consumer awareness through advertising, through the Web site and reports, for example, on credit cards. I am not sure what that means. I am leading to the privacy issue. Does that agency have the authority to direct banks to make information available to consumers with regard to the terms of credit card transactions, and what may happen to the information that is generated by virtue of such transactions, where it is held, and that it might be given to some other institution? Most people probably think that when they do a credit card transaction the only people who know about it are the merchant and the bank. We have had recent concerns about the possibility of Canadian consumers' credit card transaction information being known to others. The recent case I heard of was a company in the United States. Therefore, that information might be caught up in the Patriot Act of that country and be made available to investigatory agencies, which is not, I think, what Canadian consumers signed on for when they got that credit card. I think Senator Hervieux- Payette asked for a response on that and you mentioned the federal government and the privacy officer. Who in the federal government?

**Mr. Salembier:** The privacy commissioner is the organization I meant.

**Senator Moore:** You meant just that one office.

**Mr. Salembier:** It was probably due to my garbled French that it maybe was not clearly communicated, but yes, the Office of the Privacy Commissioner is looking at that question and the rights of Canadians under the PIPEDA, Personal Information Protection and Electronic Documents Act.

**Senator Moore:** Does the Financial Consumer Agency of Canada not have any authority to require banks to make it known to consumers who might want to use more of their cards that this can happen to their information?

I think that this is a very large issue. I do not think that Canadian consumers were ready for this or were aware this could possibly happen. They probably thought that, as I mentioned earlier, it was information that could only be known between themselves and their respective banking institutions.

**The Chairman:** It is something that has come to our attention recently. It is a concern. It has been raised in the Senate. It is something of which consumers are not aware. Perhaps you might want to consider what, if anything, is being done. I think it goes probably beyond the Privacy Commissioner, but —

**Senator Moore:** So do I.

**The Chairman:** Perhaps you might want to consider that and return to it. Just give us something in writing on that, because it is an issue of some concern in the area of consumer protection and therefore I think the senator properly raises it with you. We caught you unawares a little because it is a new issue. To be fair, you might go back and

write to the clerk, we will circulate your answer to all members of the committee and it will be part of the record.

*[Translation]*

**Senator Massicotte:** My question has to do with competition. It was mentioned earlier that there are five or six new competitors in Canada, which is not many at all. Two structural changes have been made to our regulations in the past 10 to 15 years, and despite that, there is still very little competition. In a few months or years, the issue of bank mergers is going to come up. Canadians may be open to bank mergers, but they would like to know whether there will be enough competition and whether services will be available. Are there other regulations being contemplated or other possible structural changes to encourage competition?

*[English]*

**Mr. Salembier:** At this point, we do not have in mind additional changes to encourage further competition. We are of the view that the steps that were taken in Bill C-8 were quite positive in that regard. Again, I would mention 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 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.

The question that you raised with respect to bank mergers is one that I have discussed before this committee on other occasions. However, I can tell you that if we were to look at a bank merger sometime in the future, the impact on competition and on the choices available to Canadian consumers of financial services would be front and centre among the public interest considerations that the government would bring to bear on any such decision.

*[Translation]*

**Senator Massicotte:** I agree when it comes to credit cards. We have seen that Americans setting up shop in Canada generate a lot of competition. That is not such a bad thing. Even the banks admit that there is not much competition over bank loans as such, loans to individuals and SMEs. A number of banks are showing less interest in making bank loans. The newspapers keep saying that big business is less interested in bank loans if there is no link with investment banking. Changes have been made twice, and things still are not improving.

**Mr. Salembier:** In terms of loans to SMEs, at the time of Bill C-8, we set up a statistical program to study issues related to loans to small and medium-sized enterprise. There is a

series of studies that are done every three years on the demand and supply of loan services. There are two different overviews. In the most recent study, we discovered that authorizations to SMEs, that is, loan amounts authorized by banks and the SME loan provider group, have recently gone up. The amount currently requested by those taking out a loan has gone down, but authorizations are up.

[*English*]

When it comes to the comparisons with the American banking system, we take the view, and competition authorities generally take the view, that you have to be careful in looking at the Canadian banking system, which is six large banks, and the thousands of banks that are active in the United States, since their banking markets are much more regionally fragmented than ours. It may well be that there are 7,000 banks in the U.S. and only 74 in Canada. However, many American banking markets are dominated by either a single or very small number of institutions, whereas in Canadian banking markets, our largest institutions tend to be active on a much broader national scale. The comparison is certainly not a one to one.

**The Chairman:** I will exact some discipline here. Senator Tkachuk has a brief supplemental, and I will ask you some brief questions. Hopefully the answers will be brief, but if that is not possible, you can get them to us in writing because we are running out of time.

**Senator Tkachuk:** I have a follow-up to what Senator Massicotte was asking about, and what I had asked about earlier. On the question of new entrants, do you have a lot of applications? Are some waiting to be approved? How many have you turned down? In other words, I am trying to get a feeling for how we are doing as far as interest in the marketplace in entering the banking business is concerned.

**Mr. Salembier:** Among my responsibilities is recommending to the Minister of Finance approvals of new incorporations. I can tell you I signed one earlier this week, so there are applications in the pipeline. These are from a wide variety of players, some of them parts of larger conglomerates and some of them small entrepreneurial operations. We will get you information on the actual number and capitalization of the new entrants today.

**The Chairman:** That would be very helpful.

I have a couple of short questions, one of them dealing with consumer protection. ATM machines are growing in utilization. I notice that the rate for service charges varies from \$1.50 to \$3 in various places. I think it was \$3 and \$2.50 that I saw recently. My first understanding was that if you were a customer of one of the chartered banks and used the ATM machine, as in the case of my particular bank, there is no apparent charge for withdrawing cash. Is there some supervision with respect to that? It seems to me, going back to Senator Plamondon's point, that if you are taking \$20 or \$30 out, for the low-income consumer, a \$2 or \$2.50 charge is a lot of money for a transaction that was

supposed to be, in effect, an efficient service to reduce costs at the branches. Have you any brief comment about that?

**Mr. Salembier:** We do not regulate prices of specific services like ATM transactions. The consumer agency does have a banking services calculator, which individual Canadians can have access to and which gives them a clear idea, based on their needs for financial services — the number of transactions they do per month, the kinds of transactions, where they do them — what the cheapest banking product offerings are. People can make use of that, and I have done it myself; it does work. However, we do not regulate the institutions specifically as regards those fees.

I can tell you there is a lot of innovation in the industry in respect of arrangements for utilization of ATM machines. There was an announcement last week from one large Canadian financial institution of an agreement to provide access to its ATM network to another bank's customers free of charge.

**The Chairman:** My staff asked me to ask you a question but you can respond to us in writing. Which financial institutions own white label machines and what is the nature of those? What are the costs? We are not asking to regulate the cost, but it would be of public interest to understand that and what the spread is across the country. I find an ATM in one part of the country has much higher charges than the machine locally. I thought we were planning to spread the costs, but that is for in writing.

This question may not be fair, but I think it is appropriate to ask you on behalf of the committee. As you have pointed out, the new regime of consumer protection is relatively new. It has really been in operation a little more than two or three years. At this juncture, do you have any recommendations to make to this committee with respect to either legislative or regulatory changes that would be applicable to financial institutions to provide consumer protection? In other words, is there anything that you would like to tell us about, in the legislation or in the regulatory framework, that you think could be quickly amended to improve the protection of consumers?

**Senator Angus:** I do not think that is unfair. I think that is a good question.

**The Chairman:** By the way, if you want to consider it, we will understand that. It is an important question because that is really the heart of our mandate.

**Mr. Salembier:** It is not something I can provide to you here today. I can say we are reviewing all the provisions of the regulatory framework, including those pertaining to consumers, in preparation for the next round of financial sector reforms, which comes up in a couple of years' time.

**The Chairman:** We would be interested in anything you think is obvious that could be done quickly, because we intend to make an interim report in the near future and we will focus on that. We seek your assistance as the senior official responsible for this aspect.

**Senator Moore:** I have been prompted by Senator Plamondon to think about what a consumer signs on for when he or she applies for a credit card. The same situation exists when you apply for a life insurance policy. There is a little paragraph at the bottom authorizing the release of information. Where does that go? Can that be sent out internationally, to people whom the applicant never thought might be the recipient of personal and private information? Who is looking after that?

**Mr. Salembier:** It is under the Privacy Act.

**Senator Moore:** When coming back with the answers to the other questions I asked with regard to consumer protection, you might consider that as well. I can see where we will get caught up in that too, if we do not put some measures in place to protect Canadian consumers.

**The Chairman:** I am being indulgent with my colleagues but this has become a fascinating subject for all of us. We think this is important. Senator Massicotte has the last question and it will be short.

**Senator Massicotte:** On the same line of thought, on the life insurance side, American companies are basically using the Internet to track sites the potential future client visited. If you visited a cancer site 20 times in the last two months, I would suspect that you may have genetic concerns about cancer. Are there any regulations in Canada whereby we control access to private information, including information about computer hits and so on?

**Mr. Salembier:** As it pertains to computer hits, I could not tell you if the exchange of cookies is covered or not by the Privacy Act. I honestly could not say. It is certainly an interesting question, but the Privacy Act would be the main Canadian piece of legislation that would pertain to that.

**Senator Massicotte:** Thank you.

**The Chairman:** I want to thank the witness and his advisers very much. This has been helpful and useful. It has allowed us to get our heads around the subject matter, the complexity of it, and I apologize that it has taken more time than we thought, but it indicates how interesting your evidence was and how interested senators were in the topic. We would like materials from you in writing, and we may, if we are not satisfied, have you back for another short round to respond to some questions, but I want to thank you and your group again for coming today.

**Senator Angus:** In terms of the material you will send us, you did mention the wise persons' report. Do you have copies of that report? It is a subject on which this committee has always been helpful. I even asked Mr. Phelps and he said he did not know where all the reports are. How do you get one? Will you send all of us one?

**Mr. Salembier:** We will dig up as many as we can. It is a popular document, but I am sure we can come up with some for this committee.

**Senator Angus:** Perhaps the clerk could follow up, because it is a key document and I am amazed that this committee has not seen it.

**The Chairman:** Thank you.

**Senator Moore:** I move:

That the following budget application for a special study on the present state of the domestic and international financial system for the fiscal year ending March 31, 2005 be concurred in; and,

That the Chair submit same to the Standing Committee on Internal Economy, Budgets and Administration.

Professional and Other Services	\$ 25,750
Transportation and communications	\$ 69,070
Other Expenditures	<u>\$ 3,000</u>
TOTAL	\$ 97,820

**The Chairman:** Are there any questions or comments about this? We did discuss this in the past. There are no questions. All those in favour?

**Hon. Senators:** Agreed.

**Senator Moore:** I move:

That the following budget application for the fiscal year ending March 31, 2005 be concurred in, and, subject to the approval of the Senate to the proposed terms of reference on charitable giving,

That the Chair submit same to the Standing Committee on Internal Economy, Budgets and Administration.

Professional & Other Services	\$ 23,000
Transportation and communications	\$ 0
Other Expenditures	<u>\$ 2,000</u>
TOTAL	\$ 25,000

**The Chairman:** All in favour?

**Hon. Senators:** Agreed.

**The Chairman:** I move:

That the following budget application for the study of legislation for the fiscal year ending March 31, 2005 be concurred in; and,

That the Chair submit same to the Standing Committee on Internal Economy, Budgets and Administration.

Professional & Other Services	\$ 6,800
Transportation and communications	\$ 0
Other Expenditures	\$ 7,500
TOTAL	\$ 14,300

**The Chairman:** Are there questions or comments about this motion? Again, we discussed this briefly in the past. There are no questions. All those in favour?

**Hon. Senators:** Agreed.

**Senator Moore:** I move

That the following budget application for a special study on consumer issues arising in the financial services sector for the fiscal year ending March 31, 2005 be concurred in; and,

That the Chair submit same to the Standing Committee on Internal Economy, Budgets and Administration.

Professional & Other Services	\$ 23,000
Transportation and communications	\$ 0
Other Expenditures	\$ 2,000
TOTAL	\$ 25,000

**The Chairman:** That is a very cost-effective budget, Senator Moore. Questions or comments about this?

**Senator Plamondon:** Will that cover what we want to know about the information that goes to the United States under the Patriot Act?

**The Chairman:** I think that we have already asked the last witness those questions. If we are not satisfied we can go further, but it is certainly within the ambit of these costs. If we

do not get enough information and the committee is not satisfied, we will proceed to expand it. The idea is to get the evidence and see where it takes us, but this is very cost

**Senator Plamondon:** There were many answers that he could not provide and perhaps the answers will not be satisfactory.

**The Chairman:** Well, we will wait to hear from other witnesses and then we will decide whether to take it from this. I think the costs are sensitive. All those in favour?

**Hon. Senators:** Agreed.

**The Chairman:** We will proceed in camera to consider our draft agenda and other matters.

The committee continued in camera.