



PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

700–808 West Hastings Street, Vancouver, BC Canada V6C 3L3 • Phone: (604) 660-4444 • Fax: (604) 660-0374
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Via Email: fiareview@gov.bc.ca

September 10, 2015

FIA and CUIA Review
Policy and Legislation Division
Ministry of Finance
PO Box 9470 Stn Prov Govt
Victoria, BC V8W 9V8

To whom it may concern:

Re: Consultation on *Financial Institutions Act* and *Credit Union Incorporation Act*

The Ministry of Finance has invited input from the public for consideration as part of its upcoming review of the *Financial Institutions Act* (FIA) and *Credit Union Incorporation Act* (CUIA).

I am the Public Guardian and Trustee of British Columbia. My office operates under provincial laws to serve vulnerable British Columbians by providing and/or monitoring substitute financial, legal and personal decision making on their behalf. The Public Guardian and Trustee (PGT) services almost 28,000 clients including children who have trusts and those who in the continuing care of the province and adults who mental capacity makes them vulnerable to abuse , neglect and self-neglect. The PGT also administers estates of deceased and missing persons and provides personal trust services. The PGT administers approximately \$887 million of client assets and delivers service from offices in Vancouver, Victoria and Kelowna.

During the fiscal year ended March 31, 2015, the PGT served as property guardian for 5,383 children in the province and committee of the estate of 3,068 adults. In addition, during the same time period the PGT responded to 2,065 reports of possible abuse, neglect or self-neglect of adults.

We have chosen to make comments only on those questions found in the Initial Public Consultation Paper that we are qualified to comment on, based on our experience with this community of vulnerable British Columbians.

Financial Consumer Protection

Market Conduct Code

The PGT made a submission to the Director of the federal Financial Institutions Division on February 28, 2014 after the Director invited comments from Canadians on elements that could strengthen Canada's financial consumer protection framework. I have attached that submission for your reference as the comments are relevant to the current consultation. In particular, in that submission I describe the circumstances of vulnerable citizens who are PGT clients and set out the more common challenges they face when interacting with the financial sector. The submission also provides recommendations for guiding principles that should govern any financial consumer protection framework (market conduct code).

Ombudservices

In addition, the PGT supports the idea of credit union members having access to ombudservices to assist in dispute resolution. The PGT receives questions and occasional complaints about credit union practices and in these situations it would be useful to be able to direct those involved to an ombudsperson. We are of the view an ombudservice would assist in ensuring that the unique substitute decision making authorities found in BC are understood by all the BC credit unions.

Financial Literacy

The Initial Public Consultation Paper specifically refers to the legislative amendments tabled by the federal government in April 2014 (the amendment to the *Personal Information Protection and Electronic Documents Act*, s.c. 2000, c. 5 (PIPEDA), received Royal Assent on June 18, 2015) which permits federally regulated bodies, including financial institutions, to disclose personal information about a person without consent where disclosure is to a government institution (i.e. PGT) or to the individual's next of kin or authorized representative. The Initial Public Consultation Paper asks if similar changes should be considered with respect to BC financial institutions.

BC has a comprehensive legislative scheme governing response to abuse, neglect and self-neglect of adults which is found in Part 3 of the *Adult Guardianship Act* RSBC [1996] c.6 (AGA) and Part 2 of the *Public Guardian and Trustee Act* RSBC [1996] c. 383 (PGTA). The AGA provides that anyone with information indicating an adult may be abused or neglected and is unable to seek assistance on their own, may report the circumstances to a designated agency (designated

agencies are appointed under the AGA by the PGT and currently include the five Regional Health Authorities, Community Living BC and Providence Health Care Society).

The AGA contains a clear scheme for responding to complaints of abuse and neglect of adults in BC. The designated agencies have broad powers to investigate and provide emergency assistance to the adult. If the abuse relates to financial abuse, the designated agency refers the matter to the PGT for further investigation and response. Concerns of financial abuse of adults may also be made directly to the PGT. The PGTA gives the PGT authority to investigate allegations of financial abuse.

Both the PGTA and the AGA provide that no one must disclose or be compelled to disclose the identity of a person who makes a report under this section. Also, no action for damages may be brought against a person for making a report to these agencies. The PGT is not aware of any problems impeding the ability of BC financial institutions to disclose personal information about a person, without consent, to a designated agency or the PGT.

As noted in the Initial Public Consultation Paper, the amendment to PIPEDA permit federally regulated entities to report concerns about financial abuse to next of kin in specific circumstances. In March of 2015, the PGT made a submission to the Parliamentary Standing Committee on Industry, Science and Technology with respect to the proposed amendments to PIPEDA. In that submission, we noted that the perpetrators of financial abuse, particularly with respect to vulnerable adults, are often the next of kin of the adult. Disclosure of concerns of potential financial abuse to next of kin by a financial institution, in many cases may have the unintended consequence of alerting the abuser to the fact that the abuse has been discovered. The result may be increased risk of harm to the vulnerable adult.

These comments are equally applicable to the regulation of BC financial institutions.

I again refer you to the attached PGT submission to the Director of the federal Financial Institutions Division dated February 28, 2014. In that submission, we note that financial literacy is a significant issue for some of our child and youth and adult clients. We strongly support the provision of financial products and account agreements in clear, transparent and plain language and the need for continued financial literacy education to ensure customers understand disclosure information and to assist them in making better financial decisions.

Regulation of Trust Business

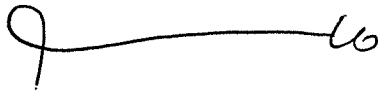
The question posed in the Initial Public Consultation Paper is whether financial institutions legislation should be expanded to regulate or generally prohibit (subject to exemptions) trust business carried on by individuals or associations. It is our observation that private fiduciary services are very limited in BC. Barriers to the provision of private fiduciary services include the complexity of the work, the level of remuneration available and the obligations and risks of the

work. While corporate trustees in Canada offer estate administration, committee, power of attorney and trustee services, the asset threshold is often \$500,000. While there are some exceptions, depending on the service and the company, they are limited. We are aware of two non-profit organizations in Vancouver that provide limited fiduciary services for low income clients.

In any event, we recommend that the financial institutions legislation be expanded to regulate any individuals and associations providing private trustee services, to ensure that the public is served by competent and ethical private fiduciaries and that compensation is available in the event of malfeasance on the part of a private fiduciary. If private fiduciaries have a professional designation (i.e. lawyers, accountants,) they are bound by their profession's code of conduct and are insured, and therefore we are of the view that they could be exempt from licensing requirements.

Thank you for the opportunity to provide comments with respect to your public consultation for the review of the FIA and CUIA.

Yours truly,

A handwritten signature in black ink, appearing to read 'Catherine M. Romanko', with a long horizontal line extending to the right.

Catherine M. Romanko
Public Guardian and Trustee

CR:tvI

Attachment



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Via Email: code.consult@fin.gc.ca

February 28, 2014

Jane Pearce
Director, Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Madam:

Re: Consultation on Canada's Financial Consumer Protection Framework

The Department of Finance Canada has invited comments from Canadians on elements that could strengthen Canada's financial consumer protection framework.

I am the Public Guardian and Trustee of British Columbia. My office operates under provincial laws to serve vulnerable British Columbians by providing and/or monitoring substitute financial, legal and personal decision making on their behalf. The Public Guardian and Trustee (PGT) serves over 30,000 clients including children who have trusts and those who are in continuing care of the province and adults whose mental incapacity makes them vulnerable to abuse, neglect and self neglect. The PGT also administers estates of deceased and missing persons and provides personal trust services. The PGT administers approximately \$893 million of client assets and the PGT delivers service from offices in Vancouver, Victoria and Kelowna.

During the fiscal year ending March 31, 2013, the PGT served 5,924 children in the continuing care of the province as their property guardian and 4,398 adults as committee of their estate. In addition, during the same time period the PGT responded to 2,377 reports of possible abuse, neglect or self neglect of adults. It is our experience with this community of vulnerable Canadians that forms the basis of our submission.

Our submission has two parts. The first part describes the circumstance of the vulnerable Canadians who are PGT clients and sets out the more common challenges they face when interacting with the financial sector. The second part provides recommendations in response to three of the consultation themes including principles for consumer protection, disclosure requirements, and stakeholder engagement.

What are the unique challenges faced by vulnerable populations served by the PGT?

As noted in the consultation, some Canadians face particular challenges in accessing financial services and in assessing the most appropriate financial products for their needs due to their capacity to process information. These challenges are amplified when the person is a minor or incapable and does not have a strong network of supportive and trustworthy family and friends to assist through informal support or as a legal representative with authority over financial decision making.

Seven of the more common challenges facing our clients when interacting with the financial service sector are identified below. Brief descriptions are offered to provide some context for each challenge.

1. Identification requirements to open and operate bank accounts***Opening accounts:***

In order to open a bank account a prospective client must provide one piece of photo ID and a second piece of ID. PGT clients often have limited opportunity to acquire the required secondary identification. Meeting the requirements can be expected to become even more difficult as technologies evolve. For example the BC Identification card (photo ID) and the BC Care Card (a second document) will soon be merged into one card.

Operating Accounts:

Due to personal circumstances it is not uncommon for vulnerable persons to lose the identification documents required to cash a cheque or withdraw funds.

2. Holds on cheque deposits

Many PGT clients who live in the community and have bank accounts, live on limited incomes. From time to time they receive cheques from employers, government agencies, including the PGT, and others. However, if they deposit the cheque it will often be subject to a hold for up to 10 days depending on the amount. This delay may cause the client to turn to local pay day loan businesses which charge a significant commissions.

3. Challenges understanding banking terminology and navigating banking systems

Financial literacy is a significant issue for some of our younger clients. Many have grown up in the care of the government. Their financial needs are looked after by others and they have never learned to operate a bank account. As adults, their financial literacy may remain limited. Terminology is difficult to follow and their ability to understand and/or they may require assistance to carry out the steps to deposit and withdraw funds.

4. Easy access to credit cards

A number of our clients have obtained free credit cards without credit checks. If a credit check was carried out, the issuer would have learned that the individual's name had been flagged and our office should have been contacted. We first learn about the credit card

when it goes to collection. In most situations we must advise the issuer that the client does not have the resources to pay the debt. However, the debt is referred to a collection agency and that agency continues to pursue both our office and the client for repayment of the debt.

5. Vulnerability to financial abuse and undue influence by those trusted to help with banking activities

In order to compensate for a person's difficulties with banking transactions, family members and caregivers often become involved and gain some legal status over the client's financial affairs. This may be through the opening of a joint account or signing an enduring power of attorney. While these may be appropriate solutions for many Canadians, they are not always appropriate solutions for others and become tools for financial abuse.

6. Laws and/or financial institution policies

There are a number of laws that influence the policies and procedures of financial institutions. Two that stand out are privacy and anti-money laundering laws. The PGT acknowledges the importance of these laws. The PGT also notes that laws and social attitudes are shifting and there is a general expectation that all adults will be supported to participate in the decisions that affect their lives. In BC those with legal authority to make decisions for others are required, "to the extent reasonable, to foster the independence of the adult and encourage the adult's involvement in any decision-making that affects the adult"¹.

For many of the PGT's clients, an important way to foster this independence is to facilitate the opening and operation of a bank account. For a number of adults in BC, the formal appointment of a legal representative to manage financial affairs can be avoided if a basic bank account is established in the adult's name. However, operating the account, whether or not the PGT or another person is committee, often requires the support or assistance of family, friends or caregivers who do not have formal legal authority to represent the client. Privacy laws and the identification requirements of anti-money laundering laws make it difficult to for these individuals to be recognized.

7. Front line staff knowledge and/or skills

The PGT encounters many financial sector employees who are concerned about their vulnerable clients and who seek solutions with one off situations. However, front line employees in the financial sector are expected to deal with a wide range of situations and products. We have observed that, as a result, many front line employees in the financial sector lack the knowledge and/or skills to be able to recognize and/or respond appropriately to clients with both visible and less visible intellectual disabilities. A consequence of this is that our clients are not provided the advice or solutions they need.

¹ See s. 19(3) *Power of Attorney Act* RSBC 1996 c. 370; s. 19 of the *Adult Guardianship Act* RSBC 1996 c.6 which is expected to come into force in 2014 will require all committees to also foster the independence of the adult.

How should the consumer code address these challenges?

While some challenges noted above may not be resolved through a consumer protection code and may require legislative or regulatory changes, we believe that a well designed set of guiding principles would be a positive first step in strengthening the existing consumer protection framework and has the potential to move towards addressing these challenges.

1. Guiding Principles

Should the government adopt a set of principles to govern financial consumer protection that would be applicable even where specific regulations have not been enacted?

The PGT strongly supports the development of a set of guiding principles that would apply even where a specific regulation has not been enacted. Well designed principles, supported by more concrete elements that are meaningful, measurable and fair, are useful tools for promoting meaningful discussion about the issues and client realities that need to be addressed. They can be useful for encouraging new and creative solutions.

The challenges facing these vulnerable populations are often complex and multi-faceted. Flexibility and creativity in design and delivery of financial services will be an important consideration going forward, particularly as new technologies and service delivery options evolve. The principles and underlying elements will need to recognize this.

Recommendations:

1. In addition to the five principles listed in the consultation, we recommend considering a principle that recognizes the importance of product design. The five design principles articulated in AGE Concern UK's report on financial inclusion² encourage an approach to the development of financial services that offers opportunities to address a number of the challenges described above. The principles are:
 - a) **Adaptability:** Product development should consider the changing needs of customers over the lifetime of the product/relationship
 - b) **Accessibility:** Products and services should be available through channels which can be accessed by as many people as possible
 - c) **Fairness:** Treat all customers fairly irrespective of age, income, or ability
 - d) **Useable Information:** Information should be designed to be understood by customers with a range of abilities
 - e) **Minimizing Hazards:** Safety of the customer and their money must be built into the design of products, systems, and facilities

² J Wells (2008) *An Inclusive Approach to Financial Products, Annex 1*, London: Age Concern.
[http://www.ageuk.org.uk/documents/en-gb/for-professionals/research/beyond%20financial%20inclusion%20\(2008\)_pro.pdf?dtrk=true](http://www.ageuk.org.uk/documents/en-gb/for-professionals/research/beyond%20financial%20inclusion%20(2008)_pro.pdf?dtrk=true)

2. We recommend that a principle be included that acknowledges the rights of vulnerable adults to participate in their own financial decision making with or without support of informal support persons and legal representatives. A corollary of this principle is that informal support persons who assist the client, but do not make decisions, need to be recognized with appropriate safeguards to prevent financial abuse and undue influence.
3. Although not an exhaustive list, the PGT also recommends that the following elements be incorporated to support the principles where applicable:
 - a) Transparency in all disclosure statements
 - b) Plain language summaries of all agreements
 - c) Flexibility in how laws are applied, particularly as they relate to identification of clients
 - d) Recognition that financial literacy includes consumer education on both the consumer's rights and responsibilities.

2. Disclosure about financial products and services

What key information do consumers need and how should it most effectively be presented to allow consumers to make informed financial decisions?

As noted above, the PGT strongly supports ensuring that information about financial products and account agreements is clear, transparent and in plain language. Education and financial literacy is also critical to ensure better understanding of the disclosure information and to help ensure better financial decisions. We acknowledge recent consumer education materials produced by the government and the Canadian Bankers Association dealing with enduring powers of attorney and joint accounts. However, financial literacy about these legal and financial arrangements will require ongoing attention.

Recommendation:

We recommend that research be carried out to determine how to best ensure that disclosure statements can be designed to ensure clients receive enough information to be able to understand the key features, costs, and operational activities for any service. This disclosure should extend to ensuring that all aspects relating to the operation of joint accounts, as well as the limits and powers of a bank power of attorney.

3. Consumer and Stakeholder Engagement

Should the government consider mechanisms for enhancing engagement among stakeholders in regulatory, supervisory and compliance processes related to consumer protection? How could consumers and consumer groups best contribute to these processes, and what might their role be?

As noted above, the challenges facing PGT clients are complex. A consumer code and laws cannot solve all of their problems. However, we are aware that various business models have

been implemented or are being piloted. These initiatives demonstrate that solutions can be identified once unique needs of different consumer groups are understood.

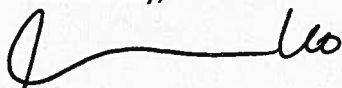
Recommendations:

1. In order to better understand the specific challenges and the lived experience of these clients we recommend that the government encourage ongoing dialogues with individuals from these vulnerable populations, those in their support systems and their advocacy organizations.
2. We recommend consultation with the agencies that serve these populations, including provincial ministries responsible for financial assistance; and those individuals and organizations that act as legal representatives for these vulnerable Canadians, including the provincial Public Guardians and Trustees.
3. The PGT encourages government to consider mechanisms for enhancing engagement among all stakeholders to ensure that regulatory, supervisory and compliance processes will be conducive to ensuring that the needs of the vulnerable populations are taken into account.
4. When seeking contribution from the consumers and their support networks we strongly encourage steps be taken to ensure opportunities for non-threatening in person dialogues are available.

Engagement by all of these parties ensures that a clearer understanding of the lived experiences will be acquired, allows for creative ideas to be generated to address consumer needs and regulatory concerns, and offers a forum for comment on the potential implications of proposed regulations and compliance processes.

Thank you for the opportunity to provide comments with respect to your consultation on strengthening Canada's financial consumer protection framework.

Yours truly,



Catherine M. Romanko
Public Guardian and Trustee

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