

2020 FINTECH YEAR IN REVIEW: CANADIAN REGULATORY DEVELOPMENTS

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Fintech has rapidly garnered the attention of consumers, businesses, and regulatory authorities in recent years. The value of fintech innovation became even more prevalent in 2020 due to the COVID-19 pandemic, which forced many people and businesses to accelerate the adoption of technology, including in the fintech space. According to a Payments Canada study published in May 2020, 62% of Canadians reported using less cash since the start of the pandemic, and 53% of Canadians have reported increased use of contactless payment methods, illustrating a material shift in consumer behavior.^[1] However, notwithstanding that the COVID-19 pandemic has drawn increased attention to the potential role and opportunities for fintech moving forward, the pace of regulatory developments in fintech slowed in 2020 as the government's priorities shifted from promoting fintech innovation to managing the COVID-19 pandemic. This article provides a brief summary of some of the more significant regulatory developments in 2020 which may impact fintech players.

Open Banking/Consumer-Directed Finance

One of the primary principles behind open banking is the free exchange of consumer data, processes, and other information between financial service providers. Consumers would have the ability to opt-in to open banking initiatives by authorizing their financial service providers to share their consumer data with third parties through digital channels. The federal government had previously announced its intention to begin the process of reviewing the merits of open banking in August 2017,^[2] and in September 2018, the Minister of Finance formally established the Advisory Committee on open banking (the "**Committee**").^[3]

On January 31, 2020, the Committee released a report entitled *Consumer-directed finance: the future of financial services*, which provided an overview of its findings and recommendations from the first phase of stakeholder consultations in 2019. Of particular significance was the Committee's transition away from using the term "open banking" in favour of the more descriptive and inclusive term of "consumer-directed finance" ("**CDF**").

In its report, the Committee indicated that implementing a structured CDF framework with rules and regulations would better protect participants by addressing and managing risks, specifically privacy and

cybersecurity risks. In particular, the Committee advocated for an accreditation system that requires participants to meet a certain risk management standard. Moreover, the Committee proposed that the CDF framework establish clear, meaningful, “opt-in” consent by consumers, whereby consumers must explicitly direct their financial service providers to share information with other participants. The Committee ultimately recommended that the federal government take further action to move forward with the implementation of CDF forward, and recommended a timeline of 1 -2 years for delivering CDF.

Unfortunately, the COVID-19 pandemic came to the forefront in Canada shortly thereafter, which has understandably delayed the timeline proposed by the Committee. However, in November 2020, the Committee [announced](#) that it would continue with its second phase of stakeholder consultations, to be held virtually throughout November and December 2020. This phase would focus on determining how regulators and the financial sector can enhance data protection and mitigate privacy risks, and signals a renewed focus on CDF in Canada.

In addition to the regulatory efforts of the federal government, private actors also made progress in 2020 in anticipation of the implementation of CDF. For example:

- The Bank of Montreal (“**BMO**”) in partnership with Intuit, a financial software company, developed a new secure data portal that allows customers to share their BMO financial data with Intuit’s accounting software, QuickBooks Online.[\[4\]](#)
- TD Canada Trust (“**TD**”) entered into a data-access agreement with Intuit, which will eventually allow customers to request that TD transfer their financial data for various Intuit services, including personal financial management apps.[\[5\]](#)
- RevoluGROUP Canada, a fintech developer, also acquired a license from the Financial Transactions and Reports Analysis Centre of Canada (“**FINTRAC**”) in December 2020.[\[6\]](#) RevoluGROUP has been operating in Europe, where open banking is permitted, and is now aiming to launch their banking app, RevoluPAY in Canada.

For more information on the development of open banking/CDF in Canada, along with its risks and merits, please refer to our [February 2019](#), [July 2019](#), and [February 2020](#) bulletins.

Payments Canada Modernization

On December 8, 2016, Payments Canada [announced](#) a multi-year plan to modernize Canada’s payment systems. This plan included implementing real-time payment capability (“**Real-Time Rail**”) and a new core clearing and settlement system (“**Lynx**”) that would replace the current Large Value Transfer System.

The payments modernization plan continued in 2020, as on June 15, 2020, Payments Canada [announced](#) the

availability of ISO 20022 messages for Lynx, allowing financial institutions to update their existing applications and develop new services. ISO 20022 is a global financial messaging standard that enables the clearing and settlement of data-rich payments among financial institutions worldwide through the use of a common set of messages. This new messaging standard will strengthen Canadian businesses by enabling more efficient payments clearing and settlement.

In September and October 2020, Payments Canada sought feedback on the policy proposals contained in its consultation paper entitled [Canada's New Real-Time Payments System Policy Framework](#). Real-Time Rail is expected to be a national payments system enabling real-time credit payments and allowing financial institutions to offer new ways for consumers and businesses to access real-time irrevocable funds. In addition to being fast and final, payments will be data-rich through the use of ISO 20022 messaging.

On December 15, 2020, Payments Canada published its [Modernization Delivery Roadmap: December 2020 Update](#), confirming the expected launch of Lynx in 2021 and Real-Time Rail in 2022. Payments Canada also acknowledged that Canadians increasingly prefer digital over cash payments, and have embraced contactless payments (i.e. tapping card), in-app payments, and e-commerce. The improvements to Canada's payment systems aim to facilitate this digital shift.

The emerging pervasiveness of digital payments in Canada prompted the Bank of Canada to consider a central bank digital currency ("CBDC"). On February 25, 2020, the Bank of Canada released its [Contingency Planning for a Central Bank Digital Currency](#), which sets out a framework for issuing cash-like CBDC to the public in the event that the Bank of Canada is faced with such demands. However, the Bank of Canada clearly stated that it is only building its capacity to issue a CBDC and that it currently has no plans to launch a CBDC.

Embracing and advancing technology in order to prepare for the future has been a consistent theme for the Bank of Canada. Most recently, the Bank of Canada [announced](#) on June 30, 2020 that it will be collaborating with the Bank for International Settlements to launch an Innovation Hub in order to promote fintech innovation within the central banking community.

Virtual Currency

FINTRAC Registration and Compliance Requirements

In June 2019, the Department of Finance published [amendments](#) to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "PCMLTFA") and its associated regulations targeting virtual currency businesses. Effective June 1, 2020, "dealers in virtual currencies" were required to register with FINTRAC as money services businesses ("MSBs") and meet the requirements applicable to MSBs under the PCMLTFA and its associated regulations.

The amendments define “virtual currency” as either:

- a. “a digital representation of value that can be used for payment or investment purposes that is not a fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds”; or
- b. “a private key of a cryptographic system that enables a person or entity to have access to a digital representation of value”.

Businesses offering services such as virtual currency exchanges, brokerages, and virtual currency automated teller machines would fall under (a) above while businesses that hold customers’ private keys on their behalf (such as wallet providers) or businesses that involve tokens would fall under (b) above. Foreign virtual currency businesses also need to register with FINTRAC as foreign MSBs in order to continue offering their services to Canadian clients.

Dealers who are required to register with FINTRAC must also develop an anti-money laundering compliance program, which includes appointing a compliance officer, developing written policies and procedures regarding client identification, record-keeping, and reporting suspicious activities or transactions, undertaking risk assessments, establishing an ongoing training program, and periodically reviewing the effectiveness of their compliance program.

Furthermore, FINTRAC was granted legislative authority to issue and publish administrative monetary penalties for non-compliance.

On December 2, 2020, FINTRAC published [guidance](#) on money laundering and terrorist financing red flag indicators. This guidance applies to all reporting entities that are subject to the PCMLTFA and its associated regulations. In particular, FINTRAC outlined many red flag indicators specific to virtual currencies and emphasized the importance of businesses properly identifying their clients in order to effectively review and assess their behaviour.

Securities Regulation

There may also be securities law implications for dealers in virtual currencies. On January 16, 2020, the Canadian Securities Administrators (the “**CSA**”) issued [CSA Staff Notice 21-327, Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets](#). In this notice, the CSA advised that securities legislation can apply to exchanges that facilitate the buying and selling of crypto assets.

In 2020, a leading crypto-asset trading platform agreed that it was subject to Ontario securities law in a [settlement](#) with the Ontario Securities Commission. Therefore, it is important for dealers in virtual currencies to seek advice on the requirements of securities regulation in addition to registering with FINTRAC and

complying with the PCMLTFA and its associated regulations.

Conclusion

Although the anticipated pace of regulatory developments slowed in 2020 due to the COVID-19 pandemic, Canada has nevertheless continued its transition to an increasingly digital financial community. This transition has highlighted the value that fintech brings to the Canadian economy. Open banking/CDF, virtual currencies, and data-rich, real-time payments will provide consumers and businesses with the flexibility to effectively manage their finances and engage in more diverse transactions. However, fintech initiatives in Canada are generally subject to the federal government's efforts to protect Canadians and safeguard financial stability. In this respect, the federal government is embracing fintech innovation within the scope of comprehensive regulatory frameworks to mitigate risks. This approach, coupled with the continued development of fintech and emerging significance of digitalizing the Canadian economy as the COVID-19 pandemic unfolds, will continue to lead to further regulatory developments in 2021.

[1] Payments Canada, [*COVID-19 pandemic dramatically shifts Canadians' spending habits*](#) (13 May 2020).

[2] Department of Finance Canada, [*Potential Policy Measures to Support a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future*](#) (11 August 2017).

[3] Department of Finance Canada, [*Minister Morneau Launches Advisory Committee on Open Banking*](#)" (26 September 2018).

[4] Bank of Montreal, [*BMO Completes API Portal for Small Business Customers in Move Towards Open Banking*](#)" (11 August 2020).

[5] TD Bank Group, [*TD enters into North American data-access agreement with Intuit*](#)" (2 September 2020).

[6] RevoluGROUP Canada Inc., [*RevoluGROUP Canada Inc. Granted Canadian FINTRAC License*](#)", *GlobeNewswire* (7 December 2020).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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