

# COULD IT BE TRUE? CANADA TO INTRODUCE OPEN BANKING LEGISLATION

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On November 21, 2023, the Government of Canada released its [2023 Fall Economic Statement](#) (the “**Economic Statement**”). The Economic Statement announced the federal government’s intention to introduce legislation establishing an open banking framework, re-branded as [consumer-driven banking](#), that would regulate third-party access to consumers’ financial data (the “**Proposed Framework**”). Concurrently with the release of the Economic Statement, the federal government published a [Policy Statement on Consumer-Driven Banking](#) (the “**Policy Statement**”) to provide more insight and guidance for the implementation of the Proposed Framework.

The announcement follows the Department of Finance’s public consultation on how Canadian legislation, regulations, and policies should address emerging trends impacting, among others, access to banking (the “**Consultation**”). In [our prior bulletin](#) describing the Consultation, we asserted that open banking may provide an opportunity to improve access to banking for Canadians.

The federal government has been [considering the merits of open banking for several years](#), including their intention to establish an open banking system in their 2021 re-election platform. Through the Economic Statement and Policy Statement, however, the government has committed itself to introducing legislation through Budget 2024 and fully implementing a consumer-driven banking framework by 2025.

## What is Open Banking?

Open banking is a regulatory framework in which consumers can opt-in to sharing their financial data, typically stored by their bank, with authorized third parties, such as other banks or accredited financial technology companies. This data sharing would allow consumers to access unique services to improve their financial outcomes (such as obtaining loans or advice for managing finances) specifically tailored to the customer, which may not otherwise be provided by a consumer’s primary financial institution.

While consumers can already share financial data with third party companies, this is often only possible by sharing banking credentials directly with the third party, who then collects financial data through a crude process known as “screen scraping”. Recognizing the [privacy and data security risks](#) inherent in this system,

the Proposed Framework is intended to create a safer and more secure structure for sharing data, that prioritizes consumer trust.

### **What Will Canada's Consumer-driven Banking Framework Look Like?**

In establishing an open banking framework, the Department of Finance has been guided by three policy objectives: (1) safety and soundness; (2) consumer financial well-being and protection; and (3) economic growth and international competitiveness. In line with this, the Proposed Framework will likely aim to prioritize addressing security risks to improve consumers' financial outcomes and providing continuing support to the Canadian financial sector. In 2022, the federal government assembled [four working groups](#) focused on the essential elements of accreditation, liability, privacy, and security to develop common rules, accreditation criteria, and technical standards for Canada's open banking system. The Proposed Framework and Policy Statement generally reflect the work and recommendations of these working groups.

Highlights from the Proposed Framework include:

- Empowering Canadians to securely access and share their financial data, while ensuring they are not subject to fees when doing so;
- Phasing out screen-scraping;
- Ensuring parties at fault will be liable for any damages or data breaches; and
- Providing safe access to innovative products and services that can help Canadians manage their finances including for example:
  - Budgeting tools;
  - Products that aggregate accounts or build credit scores to provide a more complete picture of their finances; and
  - Platforms that provide personalized yet automated financial advice.

To ensure that the implementation of the Proposed Framework will not harm cross-border transactions, the federal government has selected an approach consistent with those approaches taken by its largest trading partners, including the US.

Open banking has already taken hold in many countries around the world, most notably in the UK and Australia. More recently, the US Consumer Financial Protection Bureau [announced](#), on October 19, 2023, a proposed set of rules for Personal Financial Data Rights, which aim to jumpstart the open banking system in the US.

With respect to governance, there has been considerable debate over who will oversee the regulation of open banking in Canada. While the preference stated by the open banking advisory committees was a [hybrid entity](#)

where the federal government and big banks would both play oversight roles, the Policy Statement indicates that the federal government has ultimately stated its intention to enact a government-oversight model.

### **What's Next?**

The legislation to be introduced in Budget 2024 will adopt a phased-in approach to the scope of the consumer-driven banking framework. While the scope may be expanded at a later date, federally-regulated financial institutions meeting a specified retail volume will be the first group required to participate. Other federally-regulated financial institutions, credit unions and accredited third parties can choose to opt-in. All participating entities will have equal access to data sharing requests, as the framework mandates reciprocal access.

Although the federal government's intention to introduce legislation to implement the Proposed Framework is a significant step, the news should be met with a healthy dose of skepticism given the history of long delays when it comes to open banking in Canada.

### **The Politics**

The government's renewed intent to bring forward an open banking framework comes amid heightened political focus on consumer protection, competition, and pocketbook issues. An open banking framework is expected to increase competition in the financial services sector and give consumers greater control over their finances.

The Liberals have been seeking to deliver cost neutral initiatives which have a tangible impact on the lives and pocketbooks of Canadians ahead of a possible 2024 election, however, it seems unlikely that an open banking framework will be delivered until late 2024 at the earliest. The government has signaled its intent to propose a framework via Budget 2024 and the corresponding budget implementation legislation, which would be unlikely to receive royal assent before June 2024. There remain opportunities to provide input on the framework through pre-budget engagement or when a proposed framework is presented.

This is a joint bulletin between McMillan LLP and McMillan Vantage.

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### **A Cautionary Note**

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