

CONSUMER-DIRECTED FINANCE: CANADA'S ANSWER TO OPEN BANKING

Posted on February 26, 2020

Categories: [Insights](#), [Publications](#)

On January 31, 2020, the Advisory Committee on Open Banking released a report entitled *Consumer-directed finance: the future of financial services*^[1] providing an overview of the findings and recommendations of the Committee, after completing the first phase of their stakeholder engagement in 2019. A more detailed summary of last year's developments with respect to open banking is available in our February 2019^[2] and July 2019^[3] bulletins.

Of particular significance is the Committee's re-branding of "open banking", opting for the more descriptive and inclusive "consumer-directed finance" ("**CDF**"). The Committee felt that CDF more accurately captures the proposed consumer-controlled model, designed to place the interests of consumers at the forefront without sacrificing security and privacy. Also, with the use of the term "finance", the Committee stresses that the discussion should not be limited to banking, as the protection of consumer financial information naturally extends beyond the banking sector.

The Demand for Data Sharing

Upon completion of its consultation phase, the Committee realized that, in reality, data sharing by customers is already a significant part of the financial sector. Roughly four million Canadians rely on data-driven services already, most of which are driven by screen scraping processes, to manage their finances and their businesses. However, the current unstructured environment poses data-protection, privacy and cybersecurity risks to consumers and financial institutions.

Nevertheless, the market has demonstrated a demand for data sharing services and for consumers to be allowed do more with their financial information. Enabling a CDF framework, with proper safeguards in place, is expected to not only meet the current demand for data sharing, but also deliver benefits to Canadian consumers, financial institutions, small businesses and the overall economy.

CDF would Provide Canadians with Meaningful Benefits

Greater Control and Financial Inclusion

One of the greatest benefits of a CDF framework is that it has the potential to deliver greater financial inclusion by giving consumers more control over their financial information. It would allow Canadian consumers to use their financial information to secure better rates or products and access new tools to improve their financial health, for instance, allowing Canadians to secure online loans and facilitating entrepreneurs' access to alternative sources of funding. Small businesses could also use a CDF framework to track their financial transactions, thereby seamlessly managing their invoices and cash flow.

Foster Innovation

A robust CDF framework would foster an innovative and competitive financial sector. The Committee acknowledges that Canada hosts many emerging innovative companies, whose services partly depend on consistent flows of consumer-permissioned transaction data. Such business models are threatened when access to that data is interrupted, whether through a cybersecurity attack or otherwise.

Developing a CDF framework would not only provide a more secure and reliable way to enhance services already in the market, it would also allow all players in the ecosystem, regardless of their size, to benefit from and build on the existing strengths of the financial services sector. This act of information and platform sharing will undoubtedly enable innovators to participate in ways the financial services sector, as well as the economy more broadly, can benefit from.

Are the Risks to Privacy, Cybersecurity and Financial Stability Unsurmountable?

As noted, the Committee estimates that four million Canadians are already relying on similar data-driven technologies. These services are largely unregulated and create risk for consumers, market entrants and financial institutions. The Committee is of the opinion that implementation of a structured CDF framework would better address and manage the risks to privacy, security and stability.

Indeed, any successful CDF framework must have at its core regulations and rules to protect participants, including cybersecurity best practices and standards as well as privacy and data protection measures. These tenets are not only central to CDF design; they would also establish a foundation of trust in the framework that is essential to its successful implementation.

Based on feedback from stakeholders, the Committee proposes that the CDF framework establish clear, meaningful, opt-in consent by consumers, whereby they explicitly direct their bank to share information with other participants. The opt-in nature of consent ensures that there is no requirement to participate in CDF. It also means that consumers need not take any positive action to remain outside CDF, minimizing any potential confusion that may arise.

An accreditation system is also recommended that requires participants in the CDF framework to meet a

certain risk management standard. Regular oversight can be delegated to a regulatory authority or an independent expert body. However, the Committee warns that risk management standards should not be a tool to introduce competitive barriers. Successful implementation of this recommendation would thus involve “a clear, transparent and fair pathway to accreditation” through an independent process.

What if Canada Chooses Not to Implement a CDF Framework?

It is fairly clear at this point that inaction presents risk to the global competitiveness of Canada’s financial sector. Stakeholders across the country note that without a CDF framework, the country stands to lose significant ground in innovation. In addition to the risk of losing local talent to other markets (which may already be occurring), there is a real risk of foreign players dominating the Canadian market, to the detriment of the financial services sector as well as the Canadian economy as a whole.

Role Players / Market Participants

The Committee agrees with stakeholders that government and the industry should work in tandem to develop the Canadian CDF framework, and outlines specific roles for each of the market participants.

Government

Governments are the guardians of oversight and enforcers of protection rights. These are essential roles for the government, particularly in implementing the CDF framework. The Committee identified a need for the government to act as an accelerant for the CDF framework by prescribing definitive timelines and identifying priorities and key action items.

Industry Stakeholders

On the other hand, industry participants should drive Canada’s CDF technical standards. In today’s world, technical knowledge is quickly evolving and industry stakeholders are the best equipped to deliver and maintain information on how data is permissioned, moved between participants and protected. Canadian industry stakeholders also have the benefit of learning from developments in other jurisdictions, and ought to adapt them to provide end users with straightforward, seamless and convenient interface.

It is important however to ensure that the CDF framework is fair for all participants involved, and that industry stakeholders developing the technical standards are representative of a wide variety of participants from established financial institutions to smaller businesses.

Conclusion and the Committee’s Recommendations

The Committee recommends the implementation of a CDF framework in Canada. Innovative, data-driven

services are in high demand, as they provide consumers with meaningful control over their financial information, thereby allowing them to be better equipped to manage their finances. The benefits of a CDF framework are also expected to extend beyond the consumer to financial institutions and the broader Canadian economy. A CDF framework would foster innovation in Canada, boosting the health and stability of our financial sector.

Stakeholders' key concerns regarding privacy and cybersecurity were heard and acknowledged. The Committee agreed that a regulatory system is critical to protect the privacy rights of Canadians. However, equal weight must be given to the growth of a vibrant financial ecosystem and technological innovation. Accordingly, these concerns, while real, should not be an absolute deterrent.

Finally, the Committee provided the following recommendations for the government to follow in implementing a Canadian CDF framework:

1. CDF should enable consumer choice and meaningful control over their financial information;
2. CDF must be secure, respect and enhance privacy and the framework must be an improvement over the status quo;
3. Innovation should guide the development of Canada's CDF framework;
4. The government ought to catalyze and accelerate the move towards CDF. The industry needs to deliver innovative and new technical solutions to enable the framework;
5. CDF should serve as a blueprint for the government to enable enhanced data choice and control across various sectors;
6. Canada ought to look at how CDF frameworks were implemented in other jurisdictions;
7. The government ought to work in tandem with stakeholders to develop a policy framework to ensure Canada's CDF delivers on the above principles.

With the publication of the Report, the Committee recommends that the government take further action to move the implementation of CDF forward, and suggests, based on developments in other jurisdictions, that a reasonable timeline should be in the range of one to two years for delivering consumer-directed finance. In the meantime, the Committee will embark on another consultation phase with stakeholders in the spring of 2020, focused on themes raised during this consultation phase, including liability, accreditation, governance, screen scraping, and accessibility.

Interestingly, the Committee notes that CDF is a "first step on the continuum toward broader digital transformation," that will provide the governments with a blueprint on how to transpose these principles to other sectors.

by [Darcy Ammerman](#), Anthony Pallotta, Donia Hashem (Articling Student)

[1] [Consumer-directed finance: the future of financial services report](#)

[2] [February 2019 bulletin](#)

[3] [July 2019 bulletin](#)

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.

© McMillan LLP 2020