# THE STAKES AND PROMISE OF OPEN BANKING IN CANADA


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FUTURE OF LAW

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The Investor Protection Program provides legal support and public legal education to individuals from vulnerable communities—such as seniors, newcomers, youth, and low-income Canadians—who are at risk of or have experienced investment-related harm. Our mission is to promote fairness, financial literacy, and access to justice in the investment landscape.

**About the Working Group**
This report was written by Juyoung Ban, Glenn Howard, Dima Kiwan, Pe'er Krut, Talha Mahmood, and Emily Miller. It was edited by Julissa Gonzalez and Joshua Morrison.

This report is divided into two main parts. The first outlines Canada's current policy landscape and compares it with global implementations to identify the foundational pillars of an effective open banking regime. The second part interrogates six key areas of concern and opportunity: the impact of open banking on vulnerable populations; its potential to improve financial literacy; implications for market competition; data security and consumer consent; the adequacy of whistleblower protections; and the effectiveness of compensation mechanisms for consumers who suffer harm.

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Established in 1887, the Faculty of Law is one of the oldest professional faculties at the University of Toronto, with a long and illustrious history. Today, it is one of the world's great law schools, a dynamic academic and social community with more than 50 full-time faculty members and up to a dozen distinguished short-term visiting professors from the world's leading law schools, as well as 600 undergraduate and graduate students.

The Faculty's rich academic programs are complemented by its many legal clinics and public interest programs, and its close links to the Faculty's more than 6,000 alumni, who enjoy rewarding careers in every sector of Canadian society and remain involved in many aspects of life at the law school.

# Open Banking in Canada

**Introduction: The Stakes and Promise of Open Banking in Canada**

Open banking represents a fundamental shift in how financial data is accessed, controlled, and utilized. At its core, it promises to empower consumers with greater control over their financial information, enabling tailored services, increased competition, and improved financial decision-making. As Canada prepares to implement its own Consumer-Driven Banking Framework, this report aims to critically assess what is at stake, what can be gained, and what must be safeguarded.

Although Canada is a latecomer to open banking, it has the advantage of learning from the experiences, both positive and cautionary, of other jurisdictions such as the UK, Australia, and the European Union. These international models reveal the transformative potential of open banking to democratize financial access and stimulate innovation, but they also expose pitfalls in areas such as data security, consumer protection, and equitable access.

This report is divided into two main parts. The first outlines Canada's current policy landscape and compares it with global implementations to identify the foundational pillars of an effective open banking regime. The second part interrogates six key areas of concern and opportunity: the impact of open banking on vulnerable populations; its potential to improve financial literacy; implications for market competition; data security and consumer consent; the adequacy of whistleblower protections; and the effectiveness of compensation mechanisms for consumers who suffer harm.

Through original research and comparative analysis, this report argues that while open banking offers Canada a rare opportunity to modernize its financial services sector, its success will depend not just on technical implementation, but on a strong, equity-centered regulatory framework. Without adequate safeguards and an inclusive design, open banking risks reinforcing the very inequities it purports to solve.

## PART 1: Background and Context

1. **What is open banking?** The Canadian Department of Finance defines open banking as "a framework where consumers and businesses can authorize third party financial service providers to access their financial transaction data, using secure online channels."[1]

2. **When did open banking first appear in Canada?** Open banking is not available in Canada yet. The following is a brief timeline of government actions on open banking:

    - 2018 – Government tasks Advisory Committee on Open Banking to explore open banking's merits.
    - 2021 — Government releases Advisory Committee report proposing January 2023 as target launch date for open banking.
    - 2023 — Liberal government announces 2024 budget for open banking in Fall Economic Statement
    - 2024 — Budget 2024 released, committing to advance Consumer-Driven Banking Framework. Government promises to introduce legislation for "foundational elements" of open banking framework in spring 2024; pledges to legislate remaining elements in fall 2024, allocates $1 million to Financial Consumer Agency of Canada (FCAC) and $4.1 million to

[1] https://www.canada.ca/en/department-finance/programs/consultations/2019/open-banking.html

Department of Finance, passes Bill C-69 (Budget Implementation Act 2024 No. 1) which receives Royal Assent, establishing consumer-driven banking framework.

**3. How Canada's proposed open banking model compares to global existing frameworks**

In Canada, open banking is still being implemented. The recently passed *Consumer-Driven Banking Act* outlines foundational elements: consumer data will be read-only, subject to renewed consent every 12 months, and only approved entities may participate—violations can result in penalties between $100,000 and $5 million. The government will standardize APIs, and liability will move with the data, placing responsibility on the party controlling it. Like other countries, Canada is adopting a phased rollout, starting with mandatory participation from major banks and optional participation for smaller institutions.

The European Union was the first to implement open banking. It mandates read-only data sharing and introduced stronger customer authentication, requiring multiple verification factors for transactions. Consent is granted via contractual agreements, allowing third parties to either access data or initiate payments. Unlike Canada, the EU does not require standardized APIs, only secure access to payment services. Liability is partially on consumers (up to €50), after which banks bear responsibility. The EU also followed a phased implementation model, with deadlines for key milestones like API development.

Australia has largely completed its rollout. It also ensures read-only access and requires explicit, informed consent, including details on the data shared, duration of access, and revocation procedures. Its 13 legally binding safeguards protect consumers' rights to opt out of marketing and receive notifications when their data is shared. The Australian Competition and Consumer Commission (ACCC) oversees accreditation and compliance. APIs are standardized, and data holders are liable for safe usage. Implementation occurred in phases, beginning with consumer data sharing and followed by product reference data.

The United Kingdom follows the EU's PSD2 framework but expands on it. It mandates a common API standard for the nine largest banks, lowers consumer liability to €35, and broadens open banking to cover mortgage and loan data, beyond just payment accounts.

**4. Challenges currently hindering the full implementation of open banking in Canada**

First, Canada may be providing less funding than other countries who have allowed open banking. Australia provided $1.2 billion as part of its 2021-2022 Federal Budget for a digital economy strategy, which would support the implementation of open banking. It provided an additional $88.8 million in 2023 to support Consumer Data Right, which (broadly speaking) changed data rules in the country to further allow for and regulate open banking. It is unclear exactly how much money Canada has dedicated to open banking specifically; one of the only numbers provided was $1 million "to fund a campaign informing Canadians about the new framework for open banking" to the Financial Aid Consumer Agency and $4.1 million to the Department of Finance.[2]

Second, a lack of Canadian consumer knowledge about open banking may be preventing its full implementation. In 2023, Canada's Financial Aid Consumer Agency reported that "just 9% [of Canadians] have heard of open banking, and not all who have heard of open banking fully understand it." Further, the Agency reported "After hearing a definition of open banking, only 15% of respondents said they would participate in open banking, 29% said they might, and 52% said they would not." By comparison a 2022 study by Deloitte found that prior to Australia's implementation of

[2]https://www.openbankingexpo.com/news/fdata-north-america-canadas-budget-2025-should-commit-to-open-finance-timeline/

open banking, 25% of Australian's interviewed had heard of open banking.[3] Further, in 2023, NTT Data reported that 58% of respondents "still do not understand what [open banking] is" and concluded this was a barrier to its full implementation.[4]

Third, Canada still needs to pass legislation to allow for the full implementation of open banking in Canada. For example, the Canadian government needed someone to oversee the project of open banking, and it delegated this responsibility to the Financial Consumer Agency of Canada through Bill C-69 in July 2024.[5] Other similar legislative changes need to be made. This includes expanding the authorities of the Minister of Finance to allow it to govern the implementation of open banking in Canada and creating a "liability framework which includes an external complaints body that has binding resolution authority.[6] Australia and the United Kingdom were in similar positions. Australia recognized a need to implement a Consumer Data Right in 2018, and it did so by passing Bill 2022.[7]

Last, challenges may arise from the cross-border and interprovincial nature of open banking. First, how will Canada's "hybrid" system of open banking interact with other, market-driven systems? Some jurisdictions, such as India, Japan, Singapore, and South Korea, are encouraging open banking but allowing it to develop privately in the market; whereas other jurisdictions, such as the UK and the EU, are implementing mandatory open banking regimes.[8] Further, how will Canada's data privacy protections interact with those of other countries? In the United States, the Consumer Financial Protection Bureau came out with rules that essentially said consumers have a right to their data and to engage in open banking.[9] But it's an open question of how a consumer who has, for example, who is using TD Bank to engage in cross-border banking will be able to use open banking.

# PART 2: Analysis & Key Findings

Part two aims to explore the potential and limitations of open banking across six key themes – spanning consumer rights, data governance, competition, and inclusion. Drawing on international comparisons and original analysis, it highlights what Canada must consider to ensure open banking works for all, especially vulnerable and underserved populations.

### 1) Will Open Banking Benefit Vulnerable People?

This submission investigates the claim that open banking will benefit vulnerable people. After clarifying what it means to be a "vulnerable customer", this submission suggests there is evidence that open banking helps specific financial vulnerabilities: reducing impulsive and compulsive spending, improving financial literacy, and establishing a credit rating. However, the claims that open banking will benefit vulnerable people cannot be extended beyond these specific areas without additional data.

A customer may be classified as "vulnerable" for experiencing either a health-based or financial vulnerability, and customers may fluctuate between being "vulnerable" and "not vulnerable." As stated by

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[3]https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/financial-services/ca-open-banking-in-Canada-improving-awareness-transparency-and-trust-aoda.pdf
[4]https://uk.nttdata.com/news/five-years-on-and-60-percent-of-consumers-still-dont-understand-what-open-banking-is#:~:text=However%2C%20the%20research%20found%20the,public%20opinion%20begins%20to%20shift.
[5]https://www.canada.ca/en/financial-consumer-agency/news/2024/06/fcac-welcomes-new-mandate-to-oversee-canadas-consumer-driven-banking-framework.html
[6]https://www.canada.ca/en/department-finance/programs/financial-sector-policy/open-banking-implementation/budget-2024-canadas-framework-for-consumer-driven-banking.html
[7]https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr6950%22
[8] https://www.deloitte.com/global/en/Industries/financial-services/perspectives/open-banking-around-the-world.html
[9]https://www.reuters.com/business/finance/open-banking-rules-consumer-data-unveiled-by-us-watchdog-2024-10-22/

CEO of the open banking app Aro, Emma Steely, "We can all have vulnerable characteristics at some point."[10] It is important to keep in mind the different kinds of vulnerabilities and their shifting nature when considering whether open banking benefits vulnerable people.

**Analysis**: Customers of open banking may have different types of vulnerabilities.[11] A first kind of vulnerability can be described as "*health-based vulnerability*", referring to a personal health trait that makes a customer vulnerable to being harmed by open banking. This matches the Canadian Securities Administrators definition of vulnerable clients as those "who may have an illness, impairment, disability or aging process limitation that places the client at risk of financial exploitation."[12] A customer who experiences a physical or mental health issue may have a *health-based vulnerability* which makes them susceptible to exploitation (i.e. having their data stolen or being convinced to sign up for a financial product they cannot afford or do not need.)

Additionally, a customer may have a particular financial habit or status that creates a *financial vulnerability*. This tracks the Financial Conduct Authority's definition of vulnerable customers as people who "due to their personal circumstances, [are] especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care."[13] The following are common *financial vulnerabilities*:

- The customer has low financial literacy and/or technological ability.
- The customer engages in compulsive or impulsive spending.
- The customer has no credit or poor credit.
- The customer has no fixed address.
- The customer lives in an area with no physical bank branches.

Some evidence suggests open banking helps address the following specific financial vulnerabilities: compulsive spending, financial literacy, and credit ratings. Open banking may help low-income customers better understand their finances. A study conducted in the United Kingdom and published in 2023 found that participants benefitted from two apps that aggregate data from multiple bank accounts to help customers manage their finances by limiting expenses and finding opportunities to save.[14] Additionally, some studies suggest open banking apps can help curb impulsive or compulsive spending. (This particular financial vulnerability may be linked to cognitive vulnerabilities, as a 2022 article found that people experiencing mental health issues or symptoms "often manifest in poor financial decision-making including compulsive spending and risky behaviors."[15]) A 2017 study by the Money and Mental Health Institute (MMHI) involved participants blocking access to online stores at certain times of day.[16] The MMHI reported that, "In 85% of cases where users tried to visit an online shop during the closing hours they had chosen, they navigated away after seeing the block message."[17] Open banking can help curb impulsive spending by highlighting instances of unusual spending to a customer's trusted contact.

Additionally, open banking might facilitate lending to customers without a credit history. It has been suggested that customers without a credit history could give third parties access to their "transaction data

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[10] https://www.openbankingexpo.com/news/open-banking-credit-bureau-data-can-inform-customer-vulnerability/
[11] I should make clear that I am limiting my analysis of vulnerability to *individuals* using open banking and not including small businesses who may have other unique vulnerabilities within an open banking regime.
[12]https://www.ciro.ca/media/9791/download?inline#:~:text=The%20definition%20of%20vulnerable%20clients,The%20CSA%20definition%2C
[13]https://www.ciro.ca/media/9791/download?inline#:~:text=The%20definition%20of%20vulnerable%20clients,The%20CSA%20definition%2C
[14] https://www.bsa.org.uk/getmedia/593e7905-f664-42ec-b2bf-9c14d6475984/Open-Banking-for-financial-health-v7-May-2023.pdf
[15] https://www.frontiersin.org/journals/psychiatry/articles/10.3389/fpsyt.2022.810057/full
[16] https://www.moneyandmentalhealth.org/wp-content/uploads/2017/10/Shopper-Stopper-Evaluation-Report.pdf
[17] MMHI report, page 4.

trails" which can then be leveraged to get the customer credit.[18] It could work "by using [customers'] historical data on payments to utilities and telecommunication providers ... to start building creditworthiness."[19] A 2024 study found that transactional data could be used to help facilitate micro and small enterprise lending, and some believe that transactional data could be similarly used to help customers without a credit history.[20]

Third, more evidence is needed to support a broader claim that open banking helps vulnerable people. Most of the writing on open banking and vulnerable people is speculative and unsupported. The evidence of open banking helping address specific financial vulnerabilities is cited above. Beyond that, there are general claims that open banking will help vulnerable people by making certain financial services, particularly lending services, more widely available. However, the following claims are repeatedly made but are unsupported by any actual evidence:

- Open banking will help reduce fees for customers like overdraft charges.
- Open banking will make it easier for customers to compare prices of banking services.
- Open banking will help reduce fraud.
- Open banking will require banks to be more transparent about their products and services.
- Open banking will help customers consolidate their debt.
- Open banking will bring many benefits to vulnerable people if customers are convinced their data is secure.

More data is needed to support these claims. All of the investigated studies simply made these claims and provided data which said that people care about these issues (their data being secure, their debt being consolidated, etc.) but not that open banking has in fact brought any of these benefits to date.

### 2) Will Open Banking Allow for Personalization and Access to Financial Services, Improving Literacy?

**Promise of Financial Literacy:** Open banking presents an opportunity to further financial literacy amongst all Canadians. Proponents claim that, through open banking, fintechs could analyze consumer financial data from many different sources and provide personalized financial recommendations and budgeting services. Having all income and spending data on one interface would allow people to track their spending habits, create financial goals based on them, and then track their progress in real time[21]. This would give people a comprehensive understanding of their financial situation, allowing people to find tailor-made solutions to help them reach their financial goals. In theory, this will ultimately contribute to increased financial literacy in societies that adopt open banking.

**Current State:** Consumers are adopting open banking as a tool to improve their personal finances[22]. A study followed consumer use of different types of open banking, one of them being “Advice” open banking. Advice open banking encompasses personalized finance tools that aggregate accounts or provide financial advice[23]. Though only 8.6% of respondents reported using Advice open banking, this number was significantly higher than the percentage of consumers that reported using other types of open banking. This shows that consumers recognize the potential open banking has as an avenue to achieve personal financial goals. This same study found that consumers who used Advice open banking self-

[18] https://www.cgap.org/blog/open-finance-can-reduce-financial-inclusion-gaps-heres-how
[19] http://openbankingexcellence.org/blog/financial-inclusion-in-the-open-banking-era-more-than-banking-the-unbanked/
[20] https://www.cgap.org/sites/default/files/publications/Leveraging%20Transactional%20Data.pdf
[21] https://www.eif.org/news_centre/publications/eif_working_paper_2024_97.pdf (p. 17)
[22] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4071214
[23] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4071214 (p. 22)

reported higher levels of financial knowledge compared to people who used other types of open banking or no open banking at all[24]. This is a positive indication that open banking improves financial literacy.

Another factor pointing towards open banking as a useful tool for improved financial literacy is that people with poor financial behaviours, such as missing bill payments, are more likely to use Advice open banking[25]. This suggests people view open banking as a legitimately helpful tool to improve their financial behaviours. Other studies have also found an association between open banking and improved financial behaviors. A UK-based study showed that people from countries with open banking frameworks were more likely to save money, and engaged in more digital finance behaviours[26].

Overall, there is evidence to suggest that open banking has a positive impact on the financial literacy of the consumers that utilize it, and may create a positive impact on financial literacy in Canada.

**Challenges:** Despite these promising findings, some challenges remain. First, it should be noted that there is a minimal understanding of how open banking impacts consumers on an individual or macroeconomic level[27]. This may be attributed to the newness of open banking. Another issue is the low levels of adoption of open banking in jurisdictions that have implemented frameworks. The UK implemented open banking in 2018. In 2022, only 7-9% of adults reported using open banking[28]. The UK reports the highest usage rates of open banking amongst European countries[29].

Interestingly, both increased levels of financial literacy and decreased levels of financial education may impose barriers to the adoption of open banking. Research indicates that consumers with higher degrees of financial literacy are less trusting of open banking technology. These lower levels of trust lead to lower levels of open banking adoption[30]. Many fintechs that leverage open banking are designed to uplift economically marginalized individuals and communities. However, due to a lack of knowledge surrounding financial services, these people are not aware of these options[31]. Both of these factors speak to a need for financial education to accompany the advent of open banking in Canada.

**Conclusion:** There are promising indications that open banking adoption will lead to increased levels of financial literacy. However, in order to bring this about, it will be necessary to increase adoption rates and introduce financial education programs, especially within marginalized communities.

### 3) Will Open Banking Lead to Improved Competition and Services?

**What was promised:** The implementation of open banking has been promised to deliver a new era of financial products available to the everyday consumer. By sharing financial data from large banks to other companies such as fintechs, it will allow for the innovation of new services from these smaller institutions.[32] These products can then be leveraged by the consumer to fit their specific needs.

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[24] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4071214 (p. 24)
[25] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4071214 (p. 23)
[26] https://onlinelibrary.wiley.com/doi/10.1155/hbe2/9352257
[27] https://jfin-swufe.springeropen.com/articles/10.1186/s40854-023-00522-1
[28] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4105648 (p.11)
[29] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4105648 (p. 12)
[30] https://www.arvidhoffmann.nl/Chan%20et%20al%202022%20IJBM.pdf
[31] https://jfin-swufe.springeropen.com/articles/10.1186/s40854-023-00522-1
[32] Government of Canada, “Competition Bureau provides recommendations to strengthen competition in Canada’s financial sector”, (March 21 2024), online, <https://www.canada.ca/en/competition-bureau/news/2024/03/competition-bureau-provides-recommendations-to-strengthen-competition-in-canadas-financial-sector.html>

One of the primary services offered through open banking is money management. For example, when one is saving for a home, they look at their spending patterns and create a budget. Traditionally, this required one to comb through all their different accounts, track the monthly transactions, and combine them to make a budget. With open banking, all the financial data from their various accounts will be shared with a single fintech offering a money management platform of the person's choosing. This will allow for much easier insight into spending habits, allowing saving goals to be created more efficiently. [33]
Beyond money management services, open banking proponents believe it will streamline the credit application process. By allowing banks to access cash inflows and outflows from other financial institutions, they can make informed lending decisions. This broader financial profile enables individuals to better demonstrate their creditworthiness, potentially securing improved offers. [34]
Small businesses may also obtain benefits from the open banking model. For example, they can have their auditing, accounting and taxing services all on a single interface. This can reduce the complexities of running a small business and allow owners to access the important financial aspects of their business in one area.[35]

Open banking proponents also believe that the increased access of financial information will improve the range of market participants. Small banks may attract more customers due to the ease of account switching. Fintechs can leverage financial data to develop products and services more tailored to consumers, competing with one another to create the best product possible. Meanwhile, big banks may leverage their brands to develop partnerships with small companies who provide useful financial services. This broad competition is expected to challenge the traditional dominance of large banks in countries such as Canada, ultimately giving consumers more choices. [36]

**Have the promises been fulfilled in other countries?** Open banking has provided some of the benefits its proponents have proclaimed, particularly in enhancing competition. The United Kingdom serves as a key example with over 300 certified and regulated providers now providing open banking services.[37] Adoption rates among UK citizens have been improving, with recent polls indicating up to 72% of people access open banking services – often without realizing they fall under open banking at all. The most popular uses include sending money, automating bill payments and overall banking options. Those who are using open banking have also highlighted the ability to easily track transactions as one of the top services they take advantage of.[38]

Though there has been a raw increase in competition and services used, there is still widespread belief that open banking has not reached the level it was originally intended to. In Europe, the regulatory complexity of the open banking framework has created hurdles for banks and third-party providers as they face delays in product launching coupled with increased compliance costs.[39] A similar issue has emerged for open banking companies in Australia. Mid-tier and regional banks face disproportionately high compliance costs relative to their overall cashflow compared to the nation's larger banks. As a result,

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[33] Government of Canada "A review into the merits of open banking" (January, 2019), online, <https://www.canada.ca/en/department-finance/programs/consultations/2019/open-banking.html>
[34] Ibid
[35] Supra, "A review into the merits of open banking"
[36] ibid
[37] Open Banking Limited, "Regulated Providers", (2025), online, https://www.openbanking.org.uk/regulated-providers/
[38] Louise Basse, "The acceleration of open banking in the UK", (October 14, 2024), online, https://openbankingeu.mastercard.com/blog/the-acceleration-of-open-banking-in-the-uk/
[39] Carlos Albo, "Open Banking: A revolution faltering? Examining the European exerpience and future prospects", (November 11, 2024), online, https://thepaymentsassociation.org/article/open-banking-a-revolution-faltering-examining-the-european-experience-and-future-prospects/

these higher costs force these smaller companies to cut back on services they could provide, ultimately lowering the total competition.[40]

Arguably the biggest hurdle facing open banking is the lack of incentive for banks to share their data. In the UK, industry members have speculated that competition remains limited because there is little incentive for banks to give up their data, as they receive little to no benefit in return. Similar sentiments have been echoed in Europe, where profits generated from API sharing have fallen short of expectations. As a result, it has become a largely unprofitable expense for financial institutions, leading to limited investment and slowed development of API capabilities. [41]

**Canadian Perspective:** As open banking has not yet been implemented in Canada, we can learn from the successes and failures in other nations. We can limit compliance costs for small and mid-tier companies to avoid the issues seen in Australia. If they can pay lower fees that is proportional with their revenue generation, they will be able to have more cashflow remaining, which can be used to ensure they keep their services for customers. In addition, the government may be required to provide large banks incentives to share financial data. This will ensure they are more willing to update their API and can allow smaller companies easier access to the data that is critical to offer their services.

### 4) Will Open Banking Improve the Protection of Personal Data, and is the Transfer Process Secure?

**Application Programming Interface (APIs):** A central aspect of open banking is its unique and state-of-the-art method of data sharing, which is facilitated by the use of open APIs. This new method, as opposed to traditional web scraping, uses a structured set of rules for third-party interaction. Essentially, APIs serve as an intermediary that allows third-parties to communicate[42]. This enhances security and minimizes risks associated with unauthorized access.

By leveraging APIs, open banking fosters a more integrated and consumer-centric financial ecosystem. These interfaces allow third-party providers, such as fintech companies and budgeting apps, to safely interact with one another while giving consumers more control and seamless access to their financial data across multiple platforms[43]. This streamlined data-sharing process enables innovations like real-time financial insights, automated budgeting tools, and more competitive financial services, ultimately empowering consumers with greater financial literacy and decision-making capabilities.
A potential shortcoming, however, is the fact that standards are still developing surrounding APIs, and regulatory inconsistencies across different jurisdictions may lead to uneven security practices, creating risks for consumers who engage with multiple financial institutions that may not adhere to the same security protocols[44].

Additionally, while APIs are safer than traditional web scraping, the convenience and accessibility of APIs could make third-party data requests more frequent. While this has benefits, this could cause consumers to constantly be looking at and approving or denying requests, and this could make consumers overwhelmed and confused.

[40] Ellie Duncan, "Australian Banking Association: CDR has not realized its potential", (July 5, 2024), https://www.openbankingexpo.com/news/australian-banking-association-cdr-has-not-realised-its-potential/
[41] Supra note 8
[42] https://hasdata.com/blog/web-scraping-vs-api (Ermakovich, 2024)
[43] https://www.traceable.ai/blog-post/the-us-open-banking-rule-a-new-era-of-financial-data-sharing-and-the-role-of-open-apis (Marie, 2023)
[44] https://www.traceable.ai/blog-post/the-us-open-banking-rule-a-new-era-of-financial-data-sharing-and-the-role-of-open-apis (Marie, 2023)

**Consumer Control & Consent:** Open banking enhances consumer control over personal financial data by requiring explicit consent before sharing information with third parties. This framework empowers customers to decide who accesses their data and for what purposes, contrasting with traditional banking practices where data sharing is often implicit and less transparent[45].

However, the complexity of consent processes in open banking can lead to customer confusion, as mentioned earlier in the context of third-party data requests. All in all, overly intricate consent requirements and an abundance of choices may overwhelm consumers, potentially hindering their ability to make informed decisions about data sharing.

### 5) Whistleblower Protection in Canada - Current Legislative Framework in Canada

The governing legislative framework for whistleblower protections in Canada is *Public Servants Disclosure Protection Act*[46] (PSDPA), a federal statute. It aims to encourage employees in the public sector to disclose what they believe as wrongdoings in their workplace.[47] Wrongdoings within the context of the PSDPA include such as "the contravention of any law, the misuse of public funds or assets, gross mismanagement in the federal public sector, a serious breach of a code of conduct, an act or omission that creates a substantial and specific danger to the life, health and safety of Canadians or the environment, or knowingly directing or counselling a person to commit a wrongdoing."[48] The Act establishes specific channels for reporting these wrongdoings and obliges chief executives to protect whistleblowers from workplace retaliation.[49] Once reported, the statute obliges Chief executives to protect the employees against retaliations in their workplace. Such protection includes "protecting [anonymity], keeping disclosure records separate from existing files, and revealing information only to the investigator or the senior officer."[50] It provides an investigatory process if the whistleblower alleges reprisals in the workplace. Upon the investigation, the Public Servants Disclosure Protection Tribunal (PSDPT) determines whether reprisal actually occurred or not. Once reprisal is found, PSDP provides further remedial measures such as but not limited to financial compensation to the complainant, reimbursing the complainant for his or her financial losses, or rescinding disciplinary action made against the complainant. [51] PSDPA also confers the chief executives an authority to order sanctions if someone is found guilty for the reported wrongdoings.[52] Specific types of sanctions varies depending on "the severity and type of wrongdoing,"[53] but it is generally in the form of "financial penalty, reprimands, suspensions, demotions, or termination of employment."[54]

**Limits of the Current Framework in Canada:** Existing federal and provincial legislative frameworks are, however, not without limits. None of these regulations explicitly address whistleblower protection tailored to the Open Banking area. In other words, there is no statute or regulatory body that governs the unique risks related to the area that warrants distinctive protections. Even where the general whistleblower protection can apply to Open Banking, the current framework has a clear legal vacuum: PSPDA applies to employers of federal public sectors: "departments, agencies, boards, tribunals, Crown

[45] https://stripe.com/en-ca/resources/more/open-banking-regulation-explained-a-guide?utm_%20source=chatgpt.com
[46]*Public Servants Disclosure Protection Act*, SC 2005, c 46.
[47]The Professional Institute of the Public Service of Canada, "Pocket Guide on Whistleblowing," online: <pipsc.ca> [perma.cc/84KR-BNJB].
[48]*Ibid.*
[49] *Public Servants Disclosure Protection Act, supra* note 1.
[50]*Ibid.*
[51]*Ibid.*
[52]*Ibid.*
[53]*Ibid.*
[54]*Ibid.*

corporations, court administrations, and the Royal Canadian Mounted Police."[55] However, it does not apply to Parliament, Ministers and their staffs, or employees of private sectors. Although there is no specific data on the percentage of open banking employees in private sectors in Canada, it is undeniably true that open banking in Canada is predominantly driven by private financial institutions. Given that, leaving private sector employees outside of the protection of PSDPA would mean leaving the majority of employees in open banking. Furthermore, given that open banking is primarily consumer-driven in nature[56], limiting protection to "employees" leaves the majority of the participants vulnerable to whistleblower protections.

**International Benchmark: The U.S. Dodd-Frank Act:** A contrasting example is the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). It aims to offer an incentive and protection for individuals who have information about "potential violations of the federal securities laws"[57] and thereby enhancing the integrity or stability of the national financial market in the United States.[58] It provides two whistleblower programs in the U.S Securities and Exchange Commission (SEC) and the Community Futures Trading Commission (CFTC).[59] The program under the SEC is particularly notable for its broad applicability: protection extends to employees of any public and private companies,[60] which are subject to the federal securities laws. It does not exclude any entities based on types of corporation (private or public, federal or state) or types of industry. It purports to protects any individual who voluntarily[61] provides information about past, ongoing or upcoming violations of securities laws,[62] as long as the information is "original"[63] such that it is "derived from the independent knowledge or analysis of a whistleblower that is not known to the SEC."[64] Therefore, the Dodd-Frank Act casts a comprehensive net to catch violations that undermine the stability and integrity of the US financial market.

In stark contrast, whistleblower protections in Canada are more limited. Indeed, the Government Accountability Project criticized Canada's whistleblower protections as one of the "weakest in the world."[65] As we have discussed previously, the PSDPA limits its whistleblower protection to public sector employees.[66] While some provinces did enact their own provincial laws, they seldom close the gap in the whistleblower framework. For example, Ontario has legislated the *Public Service of Ontario Act* in 2006.[67] However, it primarily protects public sector employees, offering "narrower protection"[68] to private sector employees with respect to health and safety matters.

**Recommendations for Reform**: The U.S. Dodd-Frank Act offers a valuable blueprint for Canada by demonstrating how a whistleblower framework can cast a broad net to capture all relevant information that could undermine the integrity of financial markets without incurring burdensome changes or costs. By shifting the focus from the types of corporations eligible for protection to types of information that qualify, Canada can address the gaps in the existing PSDPA framework. For example, rather than limiting

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[55] *Ibid.*
[56] Global Risk Institute, "Brief on Canada's Open Banking Framework" (9 January 2025), online: <globalriskinstitute.org> [perma.cc/Y8T7-9VET].
[57] Mark Srere, "Dodd-Frank Whistleblower Program," online: <bclplaw.com>[perma.cc/9RJB-LFQQ].
[58] *Ibid.*
[59] National Whistleblower Center, "The Dodd-Frank Act," online: <whistleblowers.org>[perma.cc/DX27-GSRH].
[60] Michael Hurwitz & Jonathan Kovacs, "An Overview of the SEC's Whistleblower Award Program" (2016) 21:2 Fordham Journal of Corporate & Financial Law, 531.
[61] *Ibid*, at 537-538.
[62] *Ibid*, at 537.
[63] *Ibid*, at 539-540.
[64] National Whistleblower Center, *supra* note 13.
[65] Jessica Warwick, "Canada's Whistleblower Protection Laws under Fire" (2 August 2022), online: <regulationtomorrow.com> [bit.ly/3RQlWhp].
[66] *Ibid.*
[67] *Ibid.*
[68] *Ibid.*

protection to public sector employees, Canada could extend safeguards to whistleblowers in all corporations while conditioning eligibility on factors such as relevant to securities violations, originality of information, and voluntariness. This approach would ensure the financial misconduct is detected and reported across all corporations within the Open Banking industry, strengthening integrity of the newly rising market, while rooting out irrelevant claims.

### 6) Can Canada Fully Compensate People Who Have Suffered Under the Open Banking Scheme?

Public trust is fundamental to Canada's open banking framework. Without strong consumer protection, the framework's benefits—financial innovation, competition, and consumer empowerment—may not be realized. A key question is whether consumers can be fully compensated if harmed under this system. The framework aims to protect consumers through common industry rules, an accreditation system for third-party providers, government-led supervision, and clear liability allocation.[69] Consumers must not face fees to access or share their data, and liability will rest with the responsible party.[70] That said, consumer protection extends beyond liability to privacy, cybersecurity, and financial stability. The framework integrates these safeguards to balance innovation with consumer rights, fostering trust in the system.

**Challenges in achieving full compensation**: The open banking ecosystem involves multiple participants—data providers, recipients, and consumers—creating complexities in liability attribution and redress.[71] Ensuring full consumer compensation requires addressing liability, quantifying financial loss, and establishing efficient redress mechanisms.

***Establishing liability*** – Liability should flow with the data and rest with the party at fault. However, tracing responsibility becomes difficult when data is shared with third parties, potentially leading to intertwined liability that complicates redress.[72] Ensuring transparency in these relationships is crucial to consumer protection.[73]

***Quantifying financial loss*** – The "read access only" nature of early open banking stages complicates direct financial loss assessments.[74] Since there is no active modification of accounts in read access, it can be difficult to trace direct monetary damages back to a specific actor within the open banking framework. A clear framework must define the scope of compensable harm and ensure mechanisms exist for timely resolution.

***Ensuring adequate redress*** – Consumers require simple and efficient complaint processes, with both internal and external resolution mechanisms. A two-tiered approach balances how internal processes

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[69] *Final Report – Advisory Committee on Open Banking* (Apr 2021), online: *Government of Canada* <https://www.canada.ca/en/department-finance/programs/consultations/2021/final-report-advisory-committee-open-banking.html#a2>, at Section 6.1 Phase one: System Design and Implementation. [*Final Report*]

[70] "Consumer-directed finance: the future of financial services" (page last modified Jan 2025), online: *Government of Canada* <https://www.canada.ca/en/department-finance/programs/consultations/2019/open-banking/report.html>, at 'How should risks related to consumer protection, privacy, cybersecurity and financial stability be managed?'

[71] *Final Report, supra* note 1 at 5.1 Participants.

[72] "Liability working group meeting 3 – August 18, 2022", online: *Government of Canada* <https://www.canada.ca/en/department-finance/programs/financial-sector-policy/open-banking-implementation/liability-working-group-meeting-3-august-18-2022.html>. ["Liability meeting 3"]

[73] *Ibid.*

[74] Liability working group meeting 2 – July 26, 2022", online: *Government of Canada* <https://www.canada.ca/en/department-finance/programs/financial-sector-policy/open-banking-implementation/liability-working-group-meeting-2-july-26-2022.html>. ["Liability meeting 2"]

allow for quick resolution of transmission errors by participants, while external systems provide a fair, impartial avenue for arbitration when internal processes fail to satisfy the consumer.[75] A standardized approach should guarantee timely compensation, limit consumer liability beyond a fixed amount (e.g., $50) and prescribe automatic redress terms for financial loss.[76]

***Protecting vulnerable consumers*** – Open banking can enhance financial inclusion but also risks alienating marginalized individuals if not carefully implemented. Special protections must be in place to ensure accessibility and prevent further exclusion. For example, customer service platforms in multiple languages and across different channels, including in person services.[77]

**Requirements for effective compensation mechanisms**

Key components of an effective compensation mechanism include a transparent complaints process, robust data traceability, limited consumer liability, and clear redress terms. Two main approaches to compensation were discussed in the scheme's consultation phase:[78]

1. **Centralized approach:** a governance entity oversees dispute resolution, ecosystem transparency, and liability allocation. This approach ensures standardization but presents challenges such as complexity and ongoing governance burdens.

2. **Decentralized approach:** individual participants employ technological solutions or recordkeeping practices within a regulatory framework. For example, providers logging API calls to trace and develop a timeline for responsibility, in the event of a data-related breach. While this approach enhances flexibility, enforcing traceability standards remains a challenge.

There appears to be generally more support for the decentralized approach, as a central authority can still standardize technical requirements through accreditation, striving towards consistency.[79]

**Recommendations for improving compensation**

To improve the compensation process in open banking, the following measures should be implemented:

1. **Clarify liability rules**: Establish clear rules for attributing liability among participants, considering complexities in data sharing and outsourcing. For example, if a consumer experiences identity theft because a third-party app retained their data longer than the consented period, the app, as the data recipient, would be liable for the damages.

2. **Establish a compensation fund**: Create a pooled fund for immediate consumer compensation while fault is determined, ensuring timely redress.[80]

3. **Implement robust traceability frameworks**: Adopt a decentralized approach requiring data recipients to trace and log data interactions, ensuring accountability.

4. **Prioritize consumer education**: Develop resources to educate consumers on open banking risks, rights, and protections, enhancing trust in the system.[81]

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[75] *Ibid*.
[76] *Final Report, supra* note 1 at 7.4 Setting Common Rules
[77] Privacy working group meeting 6 – April 17, 2023", online: *Government of Canada* <https://www.canada.ca/en/department-finance/programs/financial-sector-policy/open-banking-implementation/privacy-working-group-meeting-6-april-17-2023.html>.
[78] "Liability meeting 3", *supra* note 4.
[79] *Ibid*.
[80] "Liability meeting 2", *supra* note 6.
[81] *Final Report*, supra note 1 at 7.3 Security.

5. **Address vulnerable consumers' needs**: Implement protections to ensure financial inclusion, considering accessibility, language, and alternative service channels.

6. **Ensure ongoing monitoring**: Regularly assess the compensation process and track open banking's impact on vulnerable communities to prevent negative outcomes.[82]

**Conclusion:** Consumer protection is central to the success of Canada's open banking framework, yet ensuring full compensation for affected consumers presents significant challenges. The complexities of data sharing, liability attribution, and redress mechanisms require a robust and adaptive approach to compensation. The recommended measures above aim to create a system where liability flows with the data, consumer redress is timely and effective, and trust in open banking is reinforced.

Given the evolving nature of financial technology, continuous improvement and adaptation are essential. As open banking develops, regulatory frameworks must remain responsive to emerging risks and consumer needs. By maintaining a proactive decentralized approach, Canada can foster a secure and inclusive open banking environment that balances innovation with strong consumer protections.

## PART 3: Conclusion – Building a Safer, Smarter, and More Equitable Financial Future

Open banking holds the potential to radically reshape Canada's financial ecosystem by offering consumers greater transparency, more personalized services, and access to a wider range of innovative financial tools. However, as this report demonstrates, realizing these benefits will depend on more than simply passing legislation or standardizing APIs. It will require a comprehensive and inclusive framework that prioritizes security, accountability, and access for all Canadians.

Lessons from international jurisdictions highlight both the promise and the pitfalls of open banking. Canada must avoid underfunding its rollout, address widespread consumer misunderstanding, and ensure that liability frameworks and whistleblower protections are sufficiently robust. Particular attention must be paid to the needs of vulnerable and underserved populations, who are both most in need of open banking's benefits and most at risk of exploitation.

Equally critical is the development of strong consumer redress mechanisms. Compensation frameworks must be streamlined, transparent, and accessible, capable of addressing harm without delay. At the same time, the success of open banking will hinge on building trust—through public education campaigns, secure consent processes, and meaningful protections for data privacy.

As Canada embarks on its open banking journey, policymakers must recognize that this is not merely a technical project **-** it is a public trust project. By centering equity, security, and transparency from the outset, Canada has the opportunity to develop a globally respected open banking model, one that balances innovation with responsibility, and financial efficiency with social justice.

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[82] "*2024 Fall Economic Statement:* Canada's Complete Framework for Consumer-Driven Open-Banking" (page last modified Feb 2025), online: *Government of Canada* <https://www.canada.ca/en/department-finance/programs/financial-sector-policy/open-banking-implementation/2024-fall-economic-statement-canadas-complete-framework-consumer-driven-banking.html>, at 2.1Governance.

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