Open Banking in Canada – a Primer

By Teresa Scassa[*]

Open banking represents an important change to how financial institutions manage consumer financial. Open banking initiatives are underway or are under consideration in major jurisdictions worldwide. The term "open banking" was most likely chosen because of perceived parallels with the open data movement that has been embraced by so many governments in Canada and around the world. One of the goals of the open data movement is to provide data in standardized and interoperable formats to facilitate data sharing and to reap the resulting benefits. However, open banking is different from open data in significant respects. Most importantly, financial institutions will not make consumer financial "open" in the same way as government open data – in fact, each consumer is meant to have control over their own data and will be able to decide what they choose to share and with whom. As a result, some prefer to call it "consumer-directed" banking.[1] The basic idea is that once financial data across institutions is in standard and interoperable formats, it will be much easier for consumers to share their data across institutions, with payment providers, and with fintech ('financial technology') companies that offer a range of financial services. The result will be that consumers have greater choice and broader access to financial services, while still maintaining control over their financial data.

The Consumer

Discussion of the consumer of open-banking services tends to focus on individuals, and certainly, this is an important constituency. Many ordinary individuals have multiple accounts of different kinds, often with different financial service providers. For example, an individual may have bank accounts with one bank, a mortgage with another, and RRSPs held by a different financial institution. They may also have RESPs, tax-free savings accounts, and other investments with the same or different institutions. For such consumers, getting a full picture of their finances is complicated. Open banking might therefore enable them to take advantage of new fintech services that offer budgeting and financial planning based upon a person's full financial picture. Some also suggest that open banking will be a benefit to the unbanked or the underbanked – those who do not have existing relationships with financial institutions or have only limited relationships because of poverty, immigration status, or other issues.[2] Using the tools of open banking, consumer advocacy groups and the fintech services sector could – in theory at least – assist underbanked consumers to gain access to these services – for example, by building data on creditworthiness based on spending and payment data.

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[1] See, e.g. Report of the Standing Senate Committee on Banking, Trade and Commerce, Open Banking: What it Means for You, June 2019, online: https://www.sencanada.ca/en/info-page/parl-42-1/banc-open-banking/, at p. 15.

[2] The federal government's consultation document on open banking suggests that open banking may provide some advantages to consumers excluded from traditional financial services. For example, it notes that open banking might enable "the ability to access credit on the basis of non-traditional credit risk models". See: Department of Finance Canada, "A Review into the Merits of Open Banking", January 2019, online: https://www.fin.gc.ca/activty/consult/2019/ob-bo/obbo-report-rapport-eng.asp. For a discussion of underbanking, see the Submission of ACORN Canada to the Financial Sector Review, 15 November 2016, online: https://www.fin.gc.ca/consultresp/pdf-ssge-sefc/ssge-sefc-01.pdf.

In addition to individual consumers, open banking may offer considerable benefits to small businesses. Fintech services developed for the small-business sector could provide flexible, inexpensive and useful tools for these companies to understand their financial picture, manage their finances, plan and project. Small businesses are therefore an important constituency for open banking.

While the Canadian government and banking sector are still studying the introduction of an open banking system, many individuals have already turned to fintech apps to provide new financial services. The recent *Senate Report on Open Banking* noted that data shows that 4 million Canadians are already using fintech apps,[3] although it is not clear how sustained this use is. Still, the numbers are concerning because without the benefits of a formal open banking system, sharing sensitive financial data is risky. Some of these risks are discussed in more detail below.

The Emerging Fintech Sector

"Fintech" is a term used to refer to financial services technologies. These are often consumer-oriented applications ('apps'). There is considerable interest in the development of new fintech services to meet what is felt to be a growing demand by consumers who are moving away from more paternalistic models of financial services towards self-directed management of finances and investments, as well as by small businesses that seek flexible and low cost financial services. The fintech sector is booming.[4]

One impetus behind the proposed adoption of open banking in Canada is the desire to ensure that Canadian companies have an opportunity to innovate in the fintech sector and to develop products and services – not just for the Canadian market, but for the global market as well. For global market participation, there needs to be some international co-ordination, and this is discussed below. The government is also concerned that if action is not taken quickly, the ability of Canadian companies to innovate and compete in this market will be hindered, with Canadians turning to fintech apps offered by providers in other countries, and Canadian fintech start-ups moving to other countries with a regulatory environment more conducive to their activities.

To get a sense of the kinds of apps[5] that are currently available – and that consumers are already turning to with great interest – a few examples may be helpful.[6] It is important to emphasize the diversity of what is available. Some of the most popular consumer-oriented fintech apps offer budget and financial planning

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[3] Report of the Standing Senate Committee on Banking, Trade and Commerce, Open Banking: What it Means for You, June 2019, online: https://www.sencanada.ca/en/info-page/parl-42-1/banc-open-banking/, at p. 10.

[4] Charlotte Watson and Alex LaPlante, "An Overview of Fintech in Canada", Global Risk Institute, 9 March 2018, online: https://globalriskinstitute.org/publications/an-overview-of-fintech-in-canada/; Lea Nonninger and Mekebeb Tesfaye, "Latest fintech industry trends, technologies and research from our ecosystem report", Business Insider, December 21, 2018, online: https://www.businessinsider.com/fintech-ecosystem-report; Katie Darden, Nimayi Dixit, and Tom Mason, 2018 US Fintech Market Report, Standard & Poor, 2018, online: https://www.spglobal.com/marketintelligence/en/documents/2018-us-fintech-market-report.pdf. For an overview of the fintech sector in Europe, see: Deloitte, *Overview of the Fintech sector: Challenges for the European players and possible policy measures at EU level – Study*, 28 January 2019, online: https://publications.europa.eu/en/publication-detail/-/publication/d6b1ebc0-2379-11e9-8d04-01aa75ed71a1/language-en/format-PDF

[5] Miranda Marquit, "30 Hot Fintech Startups You Should be Watching", https://www.allbusiness.com/top-fintech-startups-22513-1.html.

[6] These are just examples and are not intended as any form of endorsement of these particular services.

services. For example, the Mint[7] app offers budgeting and bill tracking services; You Need a Budget (YNAB)[8] provides consumer budgeting services; GoodBudget[9] combines budgeting with the separation of funds into different virtual envelopes to help consumers stay on track; Spendee[10] offers budgeting and expense tracking. Other apps offer services that go beyond budgeting. For example, CreditKarma[11] offers credit reports and credit monitoring; Acorns[12] facilitates micro-savings and investments by rounding up each purchase made by a user and depositing the rounded up amount; Qapital[13] also assists consumers with saving money and with investing. While many of these apps are oriented towards ordinary consumers, other fintech apps aim to help small businesses manage their accounts and finances more effectively.[14]

These fintech apps aim to satisfy unmet needs of consumers – whether individuals or small businesses – and it is not surprising that many consumers are starting to use them. However, the use of such apps in an unregulated environment presents considerable risks. For example, many fintech apps require regular access to customer financial data in order to assist with budgeting, planning or investing activities. An app that provides a customer with a full picture of their finances and helps them budget will need to access their bank account data, their credit card data, as well as any other investment or financial data. Currently, app users must provide their online username and password information for each account so that these apps can regularly access the data they require. This creates significant security risks. It may also breach the contracts the consumers have with their financial institutions, most of which require customers not to share passwords. This means that consumers may not be protected in the case of a breach that drains their accounts of funds. Another risk comes from the fact that there is generally no way for consumers to know how securely their financial information is stored by an app company, how often the app provider accesses their data and for what purposes, or the extent of data sharing with third parties. All companies will have privacy policies and terms of service, but there is no specific oversight of this fast-paced industry. Further, many fintech start-ups are just that – start-ups. Many such companies have only a transitory existence; sharing sensitive financial data with a company that is here today and gone tomorrow also carries risk. An open banking system would mitigate these risks in a number of different ways. For example, it could require participants in the open banking ecosystem to seek accreditation according to rigorous standards.

Open Banking Around the World

Open banking initiatives are under way in countries around the world. The UK has had open banking since January 2018. The UK government created the Open Banking Implementation Entity to oversee the implementation of open banking efforts, and to standardize data formats and create an application program interface (API) for open banking.[15] Australia is also making strides with open banking. It sees

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[7] https://www.mint.com/.
[8] https://www.youneedabudget.com/.
[9] https://goodbudget.com/.
[10] https://www.spendee.com/about.
[11] https://www.creditkarma.ca/.
[12] https://www.acorns.com/.
[13] https://www.qapital.com/.
[14] For a discussion of advantages of open banking for SMEs see: Conrad Ford, "What Open Banking Means for SMEs", FUTRLI, n.d, online: https://www.futrli.com/cashflow/what-open-banking-means-for-smes/.
[15] See: Open Banking, online: https://www.openbanking.org.uk/about-us/.

open banking as the first step in implementing standardized, interoperable data across multiple sectors, including the energy and telecommunications sectors.[16] Because they see this as part of a broader plan, Australia has created a Consumer Data Right[17] that is similar in concept to the data portability right seen in the EU's General Data Protection Regulation (GDPR). Other jurisdictions are also exploring open banking,[18] including the EU, the U.S., Japan, Singapore, South Korea.

For Canadian companies to compete on a global scale with open banking services, the ideal would be to use standards that are interoperable with those adopted by other nations.

Data Mobility – the Open Banking Test Case

One of the ten principles set out in the Digital Charter[19] announced by the Federal Government in May 2019 is "Transparency, Portability and Interoperability". This means that "Canadians will have clear and manageable access to their personal data and should be free to share or transfer it without undue burden." This is a principle similar to the data portability principle from the GDPR and the Australian Consumer Data Right. In the EU, the data portability right is a broad, cross-sectoral right for consumers to request their data in a machine-readable format, subject to some exceptions. Open banking is different in significant respects. First, portable consumer data will be in standard and interoperable formats, not just machine-readable. This makes it much easier for participating companies to make quick and seamless use of the data – and it enables better data quality by ensuring that the recipient of transferred data shares the same understanding of the parameters of the data. Second, the concept is that the consumer will have the choice to share their data with *approved* financial institutions and fintech service providers. The design of the approval and accreditation process will have to ensure the security of customer data and to create trust in the system. Further, the open banking system and its regulation will be financial-sector specific, although it is likely that it will also be a test case for data portability in Canada, with the potential to adopt a similar model in other sectors. This is the approach taken in Australia, where the Consumer Data Right creates a data portability right and targets three specific sectors: banking, telecommunications and energy, for the development of frameworks for secure data sharing.

Canada's Financial Sector – Particular Challenges

Canada faces some particular challenges in implementing open banking. One of these is connectivity. Canada cannot fully realize the promise and potential of open banking as long as rural, remote and northern communities have inadequate access to broadband internet. While Universal Access is a pillar in the *Digital Charter*, it remains very much a work in progress.

Another challenge facing Canada relates to the fact that the financial sector is not fully within federal jurisdiction. Although banks and banking come under federal legislative authority, credit unions and caisses populaires are, for the most part, under provincial jurisdiction, although there are now options available for individual provincial financial institutions to opt into federal regulation. The result of divided

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[16] See: Review into Open Banking in Australia: Final Report, 08 February 2018 - 23 March 2018, online: https://treasury.gov.au/consultation/c2018-t247313.

[17] Australian Government (Treasury), *Consumer Data Right*, 9 May 2018, online: https://treasury.gov.au/sites/default/files/2019-03/t286983_consumer-data-right-booklet.pdf.

[18] See: Deloitte, Open Banking Around the World: Towards a Cross-Industry Data Sharing Ecosystem, n.d., online: https://www2.deloitte.com/global/en/pages/financial-services/articles/open-banking-around-the-world.html.

[19] Canada's Digital Charter: Trust in a Digital World, https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00108.html.

jurisdiction is that the open banking framework that the federal government is considering may not automatically include provincially regulated institutions. This is a clear challenge to the potential for open banking to work seamlessly and to meet the needs of all Canadians, many of whom use the services of credit unions and caisses populaires. Smaller credit unions and caisses may not have the resources to adapt easily to new standardized data formats, and this too may be a challenge. Federal-provincial co-operation is required to ensure that open banking does not exclude some financial institutions.[20]

A related issue is the fact that the necessary regulatory framework for open banking, while mostly concentrated under federal authority (competition, banking, and private sector data protection), nonetheless spills over in some cases to provincial jurisdiction. The federal government clearly acknowledges the need to reform the *Personal Information Protection and Electronic Documents Act* (PIPEDA).[21] This is the federal private sector data protection statute. It is out of date and requires a serious upgrade to meet the demands of the digital and big data era – as well as to meet the needs of an open banking system. However, PIPEDA does not apply to the intra-provincial collection, use and disclosure of personal information by private sector organizations in provinces that have enacted substantially similar legislation – namely Quebec, Alberta and British Columbia. If the federal legislation changes, it may be necessary for each of these provinces to adapt their legislation.

In addition, the provinces have primary jurisdiction over consumer protection. It is possible that some consumer protection issues with respect to fintech companies will fall under provincial jurisdiction. Further, insurance companies and credit reporting agencies fall under provincial jurisdiction. Once again, federal-provincial cooperation will be important.

The Legal Framework

For open banking to be a success in Canada a number of challenges will need to be overcome. These include the challenges of connectivity and of mixed federal-provincial jurisdiction, discussed above. In addition to these, there are significant issues regarding security. Personal financial data is highly sensitive. Open banking cannot result in making such data less secure, nor should it expose consumers to greater risk. Converting financial data into standardized, interoperable formats and making the data capable of sharing at the customer's discretion both sound like risk-increasing activities. Thus, security is an important consideration in any open banking scheme. It is clear that the federal government is considering a regulatory scheme that would involve accrediting trusted fintech companies, and limiting participation in open banking to only those companies that have met the accreditation requirements. They are also contemplating mandatory security standards.

In addition to security measures, users of open banking need assurance that participating financial institutions properly protect their personal information and that there is adequate enforcement and appropriate recourse available if a financial institution or fintech company does not comply with the legal requirements. There is a broad consensus that PIPEDA in its current version is not up to the task, and therefore legislative amendment will be required to enable open banking to move forward.

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[20] The Senate review of Open Banking specifically recommended federal-provincial co-operation in order to work around some of the challenges of open banking across jurisdictions in Canada. See: Report of the Standing Senate Committee on Banking, Trade and Commerce, Open Banking: What it Means for You, June 2019, online: https://www.sencanada.ca/en/info-page/parl-42-1/banc-open-banking/, at p. 33.
[21] SC 2000, c 5, http://canlii.ca/t/53l5t.