

Collateral Matters

A Banking Law Newsletter

AIRD & BERLIS LLP
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Federal Government Introduces and Then Withdraws a Consumer Protection Framework Under the *Bank Act*

By David Stevens

In late October 2016, the federal government introduced Bill C-29, *Budget Implementation Act, 2016, No. 2*, which addresses a wide variety of topics, including proposed changes to the *Bank Act (Canada)*. Bill C-29 has been debated in the House of Commons and the Senate, and the government has recently decided to withdraw the portions of the legislation related to the *Bank Act*.

Bill C-29, as presented, had proposed changes to the *Bank Act (Canada)* to expand the consumer protection provisions of that statute and create what amounts to a “complete code” of consumer protection rules for federally-regulated banks. This was all found in a new Part XII.2 of the *Bank Act*, titled “Dealings with Customers and Public.” Some provisions of Part XII.2 were relocated from elsewhere in the *Bank Act*, while other provisions were new.

The form of Bill C-29 that was introduced to Parliament also included a “paramountcy clause,” indicating that Part XII.2 of the *Bank Act* is intended to be “paramount to any provision of a law or regulation of a province that relates to the protection of consumers or to business practices with respect to consumers.” Presumably, the government’s intention in including this “paramountcy clause” was to respond to the Supreme Court of Canada’s 2014 decisions in *Bank of Montreal v. Marcotte*, *Amex Bank of Canada v. Adams* and *Fédération des caisses Desjardins du Québec*. Those decisions, which we detailed in an October 2014 [Financial Services Flash](#), found that federally-regulated banks were subject to provincial consumer protection laws. The proposed “paramountcy clause” would make it more difficult to succeed in asserting the concurrent application of provincial consumer protection laws to federally-regulated banks.

As Bill C-29 was being debated, objections were raised by Quebec lawmakers, who are concerned that the proposed changes to the *Bank Act* would lessen protection for Quebec consumers. Their argument is that the consumer protection available under Quebec’s consumer protection legislation is stronger than what is being proposed in the *Bank Act*, and Quebecers should not see their rights diluted.

In response to these concerns, Minister of Finance Morneau announced on December 12, 2016, that the government will remove the proposed changes to the *Bank Act (Canada)* from Bill C-29. This was effected through an amended version of the legislation presented to the Senate. Minister Morneau indicated that the government will ask the Financial Consumer Agency of Canada to ensure that the proposed *Bank Act* protections for consumers are at least as strong as those available provincially. Once that is done, the legislation will be reintroduced to Parliament as a stand-alone bill.

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