



July 2020

## Submission to federal pre-budget consultation

### Recommendations

- **Recommendation 1:** Expand the mandate for the proposed Canadian Consumer Advocate.
- **Recommendation 2:** Recognize consumer organizations' value and financial needs to participate in public processes.
- **Recommendation 3:** Create a Consumer Advancement Fund to help fund Canada's independent, multi-issue non-profit consumer organizations for the purpose of increasing business compliance with consumer legislation, providing national consumer education programs, and enhancing the quality of the consumer voice in government policy development.
- **Recommendation 4:** Compensate consumer organizations for consultation.
- **Recommendation 5:** Fund awards from Innovation, Science and Economic Development Canada's Contributions Program for Non-Profit Consumer and Voluntary Organizations at a level that (1) corrects for the effect of inflation and (2) reflects the growth of Canada's economy over the last 20 years.

## **Context for Recommendations to Better Serve Canadians through Capable Consumer Representation**

Consumer trust is essential to the proper functioning of markets and the economy. Consumer confidence in Canada's marketplace is essential to a successful restart of an economy plagued by COVID-19. All governments and their agencies will be strained. Examples of consumer problems worsened by the pandemic and urgently requiring solutions include:

- The pandemic emphasized the need to re-frame the relationship between seniors and long-term care service providers, so seniors are empowered consumers, as opposed to passive recipients of substandard, life-endangering services.
- Traditional problems of online commerce and service-related transactions are now magnified by an increased need to shop online or obtain service: e.g. user and host system vandalism, fraud and misleading marketing, difficult multi-jurisdictional redress, vulnerability of minors engaging in e-commerce, price gouging, counterfeit and pirated products and services, unsafe products, toxic pharmaceuticals and fraudulent/problematic online reviews.
- Consumer financial vulnerability (high debt load, stagnating or unequal income growth) has grown significantly for three decades, and now a stuttering economy with high unemployment will provoke desperate acts and unbearable hardship for many people. Perils for consumers include expensive revolving credit, including credit card debt, rent-to-own transactions, reverse mortgages, and instalment loans.
- The uncertainty raised by varying government strategies to safely re-introduce for-profit, not-for-profit and public childcare, education, and transportation is prompting consumer anxiety and behavioural biases that can risk consumer health and welfare, directly and indirectly.
- Unsustainable business disruption, the difficult restoration of many essential services and the unreliable supply of products to meet basic needs indicate a need for consumer-centred policies that enable constructive business competition and consumer choice.
- Consumers' caution and fear for their safety restraining a return to normal consumption, slowing economic recovery.
- Unprecedented federal and provincial deficits and debts could prompt significant cutbacks in government services, especially those that protect consumers and have been compromised already by previous cuts and reorganizations. Near-sighted pressure from special interests to cut industry-fee-funded consumer protection oversight is likely.
- Public access to fair and due process in all functions of democratic participation and its facilitation through the free association of members of the general public has been further degraded by stressed finances, social-distancing and other practices necessitated by the public health emergency and foreseeably persistent conditions related to it.

## **Consumer Protection Policy Environment in Canada**

The dissolution of the federal Department of Consumer and Corporate Affairs in 1993 ended an era in which consumers relied on one federal department to administer federal policies that

regulated the marketplace.<sup>1</sup> Regulatory responsibilities were scattered to various Departments where consumer matters were not a primary focus, and programs withered due to neglect and under-funding. The impact on consumer organizations – once important intelligence gatherers for government on the welfare and marketplace concerns of consumers and significant contributors to consumer policy development – was to diminish them. Those remaining, such as Consumers Council of Canada, struggle to survive.

Consumer issues are now addressed by a plethora of federal and provincial agencies acting in isolation, often with inadequate resources. As a result, consumers must shop around their concerns, in a mad hunt for justice. They must more often resort to lawsuits, seek guidance from consumer organizations, or express anger and frustration or organize reaction using online reviews and social or other public media. The consumer challenges posed by COVID-19 emphasize that, without remedial action, an already weak, fragmented federal, provincial and municipal consumer protection regime will be further degraded by government financial constraints and pressure from competing interests inside and outside government.

## **Detailed Recommendations**

### **1: Expand Mandate of Canadian Consumer Advocate**

The Council was encouraged by the government's 2019 decision to create a Canadian Consumer Advocate (CCA) to "... serve as an independent, single point of contact for people who need help with banking, telecom, or transportation-related complaints, and will be empowered to review complaints and, if founded, impose appropriate penalties".

While the CCA shows the government is turning its attention to providing some coordinated regulation of the consumer marketplace, the scope and reach of the CCA mandate is inadequate, given what's ahead. Further, the initiative is well behind schedule, and little meaningful public consultation has occurred.

Significant progress in advancing consumer interests and meeting the challenges of the post COVID-19 economy lies in the establishment of an advocate with a sole function to argue for consumers, advance their needs and stress the relationship of those needs to the decision making processes within agencies of government. The economy is for consumers, not just producers. The federal government should expand the CCA's remit to ensure it is an independent agency answerable to Parliament through the Minister of Innovation, Science and Economic Development with the following roles and responsibilities:

- Powers to research, launch enquiries and recommend to Parliament where evidence exists of marketplace failures with significant impact on the economic welfare, health and safety of Canadian consumers;
- Operate a centre of excellence for consumer policy research and analysis;
- Carry out a comprehensive review of federal consumer protection and related statutes and regulations important to the consumer;

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<sup>1</sup> <https://policyoptions.irpp.org/magazines/june-2018/the-steady-decline-of-consumer-protection-in-canada/>

- Publish an annual ‘State of the Canadian Consumer’ report;
- Provide machine-readable consumer data for use by Canadian business, researchers, and consumers;
- Serve as an expert witness concerning consumer interests at parliamentary committees, public inquiries, and departmental and agency reviews or consultations on legislation, regulations or policy;
- Review and report on draft trade agreements and represent consumer interests at key internal and international trade agreement round tables;
- Engage with, financially support, and strengthen independent, multi-issue, non-profit Canadian consumer organizations;
- Coordinate and collaborate with provincial and territorial agencies to help ensure Canadians have access to the same high level of consumer protection;
- Participate at international consumer policy fora;
- Coordinate federal consumer communications and engagement/consultation strategies;
- Support and encourage academic research on consumer rights and issues facing consumers in the marketplaces of today and the future;
- Create a centre of excellence for consumer education;
- Actively participate in decisions impacting Canada’s Supply Management System, and;
- Work collaboratively to support consumer-centred policy approaches to healthcare.

## **2: Recognize Consumer Organizations’ Value, Financial Needs**

The few remaining independent, multi-issue non-profit Canadian consumer organizations are chronically under-funded yet provide an essential public service of growing importance in the post COVID-19 economy. For example, the Council is active at:

- Encouraging faster responses from government as consumers are exposed to greater health, safety, and economic risks related to distant transactions as they increasingly shop and work from home.
- Championing consumers’ need for more affordable access to better broadband services.
- Holding accountable monopoly and oligopoly retail suppliers of energy and telecommunications and broadcast services.
- Informing governments and consumers of the true costs of payday and other high-interest lending at a time of unemployment pressures on debt repayment.
- Advocating for more vigilant enforcement of consumer protection laws and exposure of unscrupulous businesses trying to recoup losses by scams, fraud, and misrepresentation.
- Challenging price gouging and unreasonable COVID-19 surcharges.
- Opposing efforts to raise barriers to certification of legitimate consumer class action suits, and exposing unconscionable contracts.
- Serving as consumer experts on national and international standards committees, government consumer advisory committees (financial services, payments systems, food, housing-related,

environment and climate-related, public safety, trade practices, regulatory competitiveness) to address a rapidly changing, innovative regulatory environment.

Such services are provided by Council volunteers with extensive experience as former regulators, policy analysts, government administrators, academics, and sector specialists. Input and representation from the Council in consultations and on committees is in high demand, valued, and credible. Yet the Council is largely uncompensated for volunteer organization or extensive efforts to provide professional research, analysis, and evidence-based options.

### **3. Create a Consumer Advancement Fund**

To support and strengthen the contribution of the Council and other consumer organizations, the Council recommends the Standing Finance Committee consider legislation to create a national Consumer Advancement Fund (CAF). The fund could come from a portion of proceeds of administrative monetary penalties (AMPs) and other fines collected by federal departments and agencies that administer and enforce consumer protection, competition, privacy and other legislation important to consumers. Fund proceeds would be transferred to Canada's independent, multi-issue non-profit consumer organizations, to increase business compliance with consumer law, provide national consumer education programs, and enhance the quality of the consumer voice in policy development. The proposed CCA could administer this fund.

Recent examples exist where the federal government, judiciary, and quasi-judicial bodies have signalled a willingness to direct the proceeds of AMPs to restitution for consumers and assist non-profit social enterprise organizations. In 1989 a victim surcharge fund was created under the Criminal Code s. 737(1). This fund is used to help victims in general, not just the victim of one specific crime. Since 2012, the Competition Bureau has directed portioned proceeds of AMPs and monetary conditions of consent agreements to non-profit organizations. At the provincial level, the CAF administered by Consumer Protection BC under its Business Practices and Consumer Protection Act is a designated statutory fund that collects proceeds of AMPs for the purposes of educating consumers and suppliers about any matters related to the Act or for the purpose of increasing compliance with the Act. Other examples exist.

### **4. Compensate Consumer Organizations for Consultation**

In addition to legislation to establish a CAF, the Council recommends the Standing Committee on Finance, in coordination with Treasury Board Secretariat, consider setting a fee structure guideline to compensate consumer organizations for research and analysis and adequate travel expenses when participating in federal consultations and to make mandatory payment of such compensation by departments or agencies conducting consultations or enquiries.

### **5. 'Catch-up' Existing Contributions Program**

Funding for Innovation, Science and Economic Development Canada's Contributions Program for Non-Profit Consumer and Voluntary Organizations has not been adjusted upward even for inflation for 20 years. This program should be funded at a minimum level of \$2 million or more annually, to overcome past inflation. And the amount should be set yet again higher, to take into account the economy's growth since the program's inception.

## About Consumers Council of Canada

Consumers Council of Canada, an independent, not-for-profit federal corporation, has worked towards an improved marketplace for consumers in Canada since 1994. One of the most active multi-issue consumer groups in Canada, it provides perspectives that help business and government manage today's consumer issues, is nationally known, and is regularly consulted by news media. Its volunteer Board of Directors and committees of members include experts in consumer issues and policy development, competition policy and law, and business development. The Council monitors consumer views through its Public Interest Network, which is open to residents of Canada. It conducts research to understand consumers' needs and concerns. It informs the public and reports its activities publicly. Its top challenges are to address the many consumer issues and public institutions' requests for capable consumer representation, given the financial resources required.<sup>2</sup>

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<sup>2</sup> <https://www.consumerscouncil.com/reports/recent-reports/request-for-internal-trade-report/>