Closing In on Bank Accountability

By Duff Conacher

In June 2001, after five years of pressure from the Canadian Community Reinvestment Coalition (CCRC) and other stakeholders, the federal government passed Bill C-8. It changes the federal *Bank Act*, *Insurance Companies Act*, the *Trust and Loan Companies Act*, and the *Cooperative Credit Association Act*. Since then, regulations have been developed to detail the new laws' practical significance.

These laws and regulations, together with other government initiatives, increase the public accountability of federally-regulated financial institutions to a level higher than any other corporate sector in Canada. These requirements present CED and social service groups with new, if limited opportunities to get banks to serve individuals, businesses, and communities fairly and well – and to hold accountable any bank that does not.

Public Accountability Statements

For CED groups, the most important new requirement is that any financial institution with equity of more than $1 billion (i.e., all six of Canada's big banks, as well as several insurance and trust companies) must disclose an annual Public Accountability Statement. This PAS must be available at all branches by mid-March every year and must include the following details:

- the institution's goals and participation in community development activities, including financial contributions.
- any new programs in small business financing and microcredit.
- the total value of commercial loans broken down by province and by the number of loans of various sizes (e.g., under $25,000, $25,000-$100,000, and so on).

For groups that provide social services, the disclosure of the following details will probably be more useful still. Each institution must report:

- charitable donations and other philanthropic activities.
- an overview of actions taken to improve access to banking services for people with low incomes, for senior citizens, and for people with disabilities.
- the opening or closing of branches and self-service banking machines.

The PAS therefore enables citizens to find out what role a financial institution is playing in community development and to compare the funding, lending, and service record of financial institutions in each province. All this should equip CED and social service groups with the information they need to approach banks with relatively poor records and urge them to finance CED projects or otherwise improve their service record.

The CCRC is pushing for additional PAS requirements so communities will know still more about the action (or inaction) of the local branches of financial institutions. We want the statement to include details of business and community development financing patterns at the neighbourhood level on the basis of the size and type of business, and the gender, race, and income of small business owner. In addition, the CCRC wants the PAS to include details about the number of service complaints received and how complaints were resolved. Under the *Community Reinvestment Act*, financial institutions in the United States have been required to disclose such detailed lending and service data for 15 years.

Industry Canada and Statistics Canada are currently conducting national surveys of the lending patterns of all types of lender. These surveys include questions that address the aforementioned attributes of small and medium-sized business borrowers. But surveys do not cover applicants who don't obtain a loan to start a business. It would be better to have the data disclosed systematically by the banks.

Service Accountability Measures

In addition to PAS requirements, banks face other requirements that finally oblige them to supply full service to people living on low incomes.

Under the new law and regulations, banks are now required to open a low-cost, full-service account – and cash cheques – for anyone who shows two valid pieces of identification. Photo ID is not required; an alternative to two pieces of ID, however, is one photo ID and a confirmation of identity from someone who already has an account at the bank. It is now also illegal for banks to require that the account applicant be employed or that s/he keep a minimum balance.

The terms of low-cost accounts vary slightly from bank to bank. Generally they include about ten transactions (including about 4 transactions by a teller, so bank machines are not always necessary) for about $4 per month. Because that charge will constitute a barrier for some people, the CCRC is pushing for banks to be required to provide more transactions for less money.

In addition, banks are now required to give four months notice (six months in rural areas) before closing a branch. They must also consult with the local community to try to compensate for the loss of full-service banking.

Compliance, Illegal Activities, & Complaints

To ensure compliance with these new rights and responsibilities, C-8 also created a regulatory agency, the Financial Consumer Agency of Canada (or FCAC, in operation since November 2001).

Canadian banks, life and health insurance companies, property and casualty insurance companies, and trust, investment brokerage, and mutual fund companies have all been required to create a national "OmbudsNetwork" to oversee the complaint-handling processes for all these financial institutions. In operation since November 2002, OmbudsNetwork is governed by a board with more independence from the industry than in the past.

If you suspect a financial institution is violating the law, first contact the FCAC for a determination. If the institution's action is illegal, the FCAC can then require corrective action by the institution or prosecute. To date, the FCAC has been negotiating corrective actions rather than prosecutions, in order to give financial institutions a year or so to adjust to the new requirements.

The CCRC has been pushing the FCAC to prosecute all violations. (Financial institutions have known for more than a year that the requirements were being developed.) Even when there is a successful prosecution, however, the maximum penalty is only $100,000 – too low to really deter a bank that enjoys over $10 billion in annual revenue. The CCRC is pushing for higher penalties.

Mergers & Takeovers

Finally, the CCRC has been pressing the government to take into account a bank's lending and service record when reviewing any proposed takeovers or mergers by the bank. Again, this has been the procedure in the U.S. for the past 15 years. There, essentially, banks that serve people and businesses poorly are not allowed to get bigger through mergers, takeovers, or even by opening branches, until their records improves.

These laws and regulations increase the public accountability of federally-regulated financial institutions to a level higher than any other corporate sector in Canada. These requirements present CED & social service groups with new, if limited opportunities to get banks to serve individuals, businesses, & communities fairly & well – & to hold accountable any bank that does not.

The Canadian Merger Review Guidelines (June 2001) apply only to banks merging with other banks. They do not include a review of a bank's past lending and service record. Also, the guidelines do not specify that a proposed merger or takeover can be turned down if the bank has a poor record.

Committees of the Senate and House of Commons held hearings on the review process in late 2002 and early 2003. Finance Minister John Manley is currently considering changes to the guidelines. You can help the CCRC by sending the Minister a letter calling for a comprehensive merger and takeover review process after the U.S. model. It would also be helpful to urge him to require more detailed disclosure of business lending data (and complaint records) in bank Public Accountability Statements, and to increase penalties for non-compliance with PAS regulations. Manley's address is House of Commons, Ottawa, KIA 0A6, and no postage is necessary. Alternatively, reach him by fax at 613-995-5176.

Working together, CED and social service groups can push the banks to serve Canadians better, and push the government to close the gaps in bank accountability measures.

DUFF CONACHER is chairperson of the Canadian Community Reinvestment Coalition, a nation-wide coalition of 100 anti-poverty, community economic development, consumer, labour, small business, and social justice groups that advocates for bank accountability in Canada. For more information about the CCRC, or to join or support its work, contact (tel) 613-789-5753, (fax) 613-241-4758, (e-mail) cancrc@web.net, or www.cancrc.org.

To obtain surveys and other details about the Small- and Medium-Enterprises Financing Data Initiative, contact Jean Régnier at Industry Canada (tel) 613-954-5462 or (e-mail) regnier.jean@ic.gc.ca. Contact the Financial Consumer Agency of Canada at (toll free) 1-866-461-3222, (fax) 613-941-1436, (e-mail) info@fcac-acfc.gc.ca, or on-line at www.fcac-acfc.gc.ca. Reach the OmbudsNetwork at (toll free) 1-866-538-3766, (fax) 613-941-1436, (e-mail) info@cfson-crcsf.ca, and www.cfson-crcsf.ca.