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<p>THE LAW OF BANKING AND PAYMENT IN CANADA Bradley Crawford, Q.C. Release No. 3, November 2024</p>
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What’s New in this Update:

This release includes overviews of the new OSFI guideline for Technology and Cyber Risk Management; the new OSFI framework for supervising federally regulated financial institutions; new rules for trust tax reporting that apply to taxation years ending after December 30, 2023; and the *Regulation respecting complaint processing and dispute resolution in the financial sector* that sets forth standardized procedures for handling complaints for entities in Québec.

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Highlights:

DIGITAL BANKING AND PAYMENTS—Financial Services and Technology – Update 2024—Technology and Regulatory Compliance—As of January 1, 2024, Canada’s OSFI introduced Guideline B-13, mandating federally regulated financial institutions (FRFIs) to enhance technology and cyber risk management. This guideline, integrated with Guidelines B-10 and E-21, requires FRFIs to establish comprehensive frameworks addressing governance, technology operations, resilience, and cyber security. Key components include risk management frameworks, third-party risk management, asset management systems, and operational risk frameworks that collectively ensure the identification, management, and mitigation of technology-related risks. These guidelines necessitate written policies for incident response, regular testing of response plans, and protocols for cooperation and information sharing during technology incidents. FRFIs must also maintain up-to-date asset inventories and implement rigorous change management and patch management processes to safeguard data integrity and security.

THE BANKING RELATIONSHIP—OPEN BANKING—Technology—Canada’s *Consumer-Driven Banking Act* (CDBA), enacted on June 20, 2024, establishes a legal framework for open banking, allowing consumers and small businesses to securely transfer their financial data to approved service providers via an API. The framework, set to be fully implemented by 2025, includes governance by a federal entity, undefined scope regarding participants and data types, permission-based accreditation, enhanced rules for consumer protection, and mandated technical standards that align with international best practices, replacing insecure methods like screen scraping. This initiative is part of broader efforts to govern data sharing and manage risks associated with emerging technologies like crypto, digital assets, and AI, underpinned by the *Artificial Intelligence and Data Act* (AIDA), which would regulate high-impact AI systems.

DIGITAL ASSETS: CHANGES TO THE PAYMENT SYSTEMS AND BANKING—SECURITIES LAW AND TRADING IN DIGITAL ASSETS (PAYMENT TRANSFER IN CRYPTO MAY BE A SECURITY TRADE—Crypto Assets and Banking—What is a Crypto Asset—The legal classification of crypto assets as securities or derivatives depends on existing legal principles and varies by province. *Pacific Coast Coin Exchange v. Ontario Securities Commission*, using a test similar to the US *Howey* test, determines that a crypto asset is a security if there is an investment of money in a common enterprise with an expectation of profit primarily from the efforts of others. The Canadian

Securities Administrators (CSA) in 2019 recognized that at least some crypto assets as not being securities or derivatives. However, the use of crypto assets in capital raising could classify them as securities, necessitating regulatory approval for public distribution. Stable coins, termed “Value-Referenced Crypto Assets” (VRCAs) by the CSA, require specific regulatory conditions to be met for securities offerings, including being fiat-backed, holding reserve assets of equal market value to the stable coin issued, and maintaining these reserves with a qualified custodian.