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SUBJECT: Consultation Document: Strengthening Canada's External Complaint Handling System <https://www.canada.ca/en/department-finance/programs/consultations/2021/consultation-strengthening-canada-external-complaint-handling-system-banking/consultation-document-strengthening-canada-external-complaint-handling-system.html>

I appreciate the opportunity to provide comments on this consultation. Free, fair, accessible, prompt and independent complaint handling is invaluable to banking clients. **In 2018, bank clients filed over 5 million complaints or about 1 out of every 7 citizens!** . This raises questions as to where the FCAC was while this was occurring.

A well-functioning, independent ECB can help ensure that Canadians receive fair outcomes when dealing with powerful banks. Canadian financial consumers deserve a much superior system than the one-sided system in place today. The Liberal government must surely realize that the status quo is unacceptable.

A 2018 FCAC report on bank sales practices <https://www.canada.ca/en/financial-consumer-agency/programs/research/bank-sales-practices.html> revealed the nature of bank culture towards clients. The report was prompted by months of reporting by CBC Go Public, in which hundreds of current and former bank employees said they were pushed to upsell customers to try to meet demanding sales targets. The FCAC concluded that retail banking culture is predominantly focused on selling and rewards employees for doing so and that increases the risk that client interests are not always given the appropriate priority. It also said the controls these banks have in place to mitigate the risks of mis-selling are "insufficient" and "underdeveloped". Another FCAC report on bank complaint handling practices showed that banks treat consumers with complaints with disdain (these reports reflect poorly on the FCAC, as well as the banks).

Taken together, the argument for a strong, independent banking ECB is overwhelming. I am therefore of the firm conviction that competition for ECB work is fundamentally wrong ,an ECB should be prohibited to have a profit motive and ECB decisions should be binding on the banks.

I strongly recommend that Finance support a true Ombudsman service, not just an ECB trying to resolve individual complaints. On 16 December 2020 the United Nations Resolution on the Ombudsman institution, was adopted by the UN General Assembly. The UN resolution represents a strong endorsement of the key principles of ombudsman institutions, including independence, objectivity, transparency, fairness and impartiality. It is an important further step in securing worldwide recognition for the work of Ombudsman institutions in promoting good administration, human rights, good governance and the rule of law. This is an important step to strengthen independent and autonomous Ombudsman institutions worldwide and to raise awareness at international level for the essential role Ombudsman institutions around the world play in the protection and promotion of human rights. It confirms and reinforces the importance of a close cooperation between the International Ombudsman Institute and the United Nations. The final document is [AVAILABLE HERE](#) . The Liberal government should endorse the formation of a true financial ombudsman service.

I provide my responses to the questions asked as follows:

1. Are these principles appropriate to guide future policy directions on the structure and key elements of the ECB system in Canada?

I urge Finance to add **Fairness** to the principles. A good local reference illustrating the role of fairness in complaint handling would be the Canadian Ombudsman's Forum *Ombudsman statement of ethical principles* http://www.ombudsmanforum.ca/en/?page_id=157 " *FAIRNESS: The Ombuds' conduct is rooted in the principles of fairness and natural justice and he/she shall act accordingly. The Ombuds considers fairness to be a factor of process, interpersonal relations and outcome. He/she pursues resolution of conflict using the approach that is appropriate to the circumstances, taking into account the relevant law and regulations, the general principles of good administration and good practice, professional standards and any relevant Code of conduct that may apply.*" . I also recommend Credibility as a core principle.

2 What ECB system structure would best address the deficiencies identified in the FCAC report and most effectively uphold the guiding principles outlined in the previous section?

A single, independent ECB would be in the best interests of bank clients. This would streamline the complaint process, reduce consumer confusion and enhance consumer trust in the banking system. Banks should not be permitted to hire their own referee. Even the question makes no sense.

3. To what extent does the profit structure of an ECB have a real or perceived impact on the impartiality and independence of an ECB?

Based on simple logic, a for-profit ECB, is likely to prioritize shareholder interests over Public interest obligations. The "customer" is the Bank, not the complainants.

A for-profit ECB does not build consumer trust when such blatant conflicts-of interest are present. Take for-profit long term care homes for example. Canadians deserve an ECB that can challenge bank decisions without fear of losing a contract or embarrassing a Bank. The prevailing practice around the world is for financial ombudsman to be statutory or non-profit. The government should embrace international best practices and move forward without delay.

4. To what extent could an ECB's assessment formula impact the real or perceived impartiality and independence of the ECB?

The OBSI formula is more likely to ensure resources are applied as necessary to obtain fair outcomes for ECB users than one based on individual case assessments.

5. What are the benefits to consumers from a banking ECB that provides non-bank dispute resolution services? Are there drawbacks?

The financial services industry silos are being disrupted by technology, competition, societal changes and consumer needs. For instance, investment products like index-linked GIC's directly compete with products in the securities sector. HELOC's and other loans are used by Canadians to finance investments. Cash moves between investment and bank accounts seamlessly. At some point, banks make referrals to their affiliated dealers based on their knowledge of clients. The links between banks, and especially the Big SIX, and investing are so intertwined that a common ECB makes a lot of sense. I believe an ECB that can handle banking and investment complaints is better prepared to address the future needs of financial consumers. FCAC would however retain regulatory accountability of the banking component of the FCAC approved ECB. Such an arrangement would strengthen the relationship between the FCAC and CSA, leading to better regulations and enhanced consumer protection. Indeed, IIROC has an information sharing MOU with the FCAC for that very purpose.

6. *Should an ECB be required to provide complainant assistance, and what type of complainant assistance should be provided?*

The bank complaint handling system is complex and difficult to navigate for most banking clients. I fully support assistance being provided when filing a complaint. Many consumers, including vulnerable clients, require assistance because they need guidance on how the complaint system operates, their rights as clients, plain language interpretation of legalese, the applicable rules / timelines and how to put together an effective, succinct complaint. The elderly may have physical or cognitive related impairments that such basic assistance can address. A well framed complaint is a foundation for fairness.

7. *Do you have views on whether the decisions of an ECB should be binding or non-binding on banks? Please refer to the guiding principles to support your position.*

A binding decision mandate is a prerequisite for a 21st century banking sector ECB. Canadians need and deserve a complaint system that results in a decision binding on the bank. Civil litigation is rarely a viable option for a individual complainant due to cost, timeline and stress involved in challenging a Bank decision. A binding decision mandate will incent more complainants to come forth and be compensated fairly, which is in the Public interest. The impact of a shortchanged compensation decision on a complainant can impact their financial, physical and mental health. Seniors/ retirees have less time and capacity to make up for uncompensated losses, so uncompensated losses are highly impactful. See **Compensation for retail investors: the social impact of monetary loss**
<https://download.asic.gov.au/media/1343636/rep240-published-May-2011.pdf>

A binding mandate will lead to improved internal bank complaint handling processes and discipline as they come to realize that consumers will have a viable option for seeking redress if they are shortchanged by the bank.

8. Should the government establish requirements for representation on the board of directors of an ECB? To what extent should an ECB be required to make public its governance process?

Effective governance of an ECB is critical for consumer trust. Governance includes setting policies, procedures and performance standards that ensure the ECB acts efficiently, effectively, fairly and in the Public interest. The public must be represented on the Board of Directors. The Board must act in a fiduciary capacity and ensure compliance with all laws and applicable Bank Act/ FCAC guidance and rules. Transparency is essential for an ECB if it is to receive public confidence. A consumer advisory committee, such as OBSI's Consumer and Investor Advisory Council, adds to the potency of ECB governance. Robust FCAC oversight over an ECN is essential with annual public disclosure of oversight findings and improvement actions.

Internal "Ombudsman "

Finance is no doubt aware that bank internal "ombudsman" are not independent. They are just one more step in the protracted complaint process, a step that has the effect of wearing complainants down, abandoning their complaint and/or keeping them from utilizing an ECB. Finance should consider eliminating this step (preferred) or at least making it an integral part of the 90 day response time constraint. Escalation should not require the client signing additional complainant documentation and agreements.

Bank complaint handling consultation

It is my understanding that Finance has decided not to move forward with its public commitment to conduct a consultation on bank internal complaint handling. This is very unfortunate as such a consultation would have revealed more consumer issues than were identified in the FCAC report. One issue would be the lack of regulatory prowess demonstrated by the FCAC. A consultation would give Finance the

opportunity to hear directly from Canadian citizens. I urge the government to launch such a consultation per the previous public commitment.

The role of the FCAC

An ECB does not exist in a vacuum. It must fit within a framework established by the FCAC. Is FCAC up to the task? When the FCAC report on sales practices was released, the FCAC seemed genuinely surprised at some of the sales practices it discovered. It was surprised because it's oversight of the banks was inadequate. Worse, a CBC exposee reported that the FCAC had revealed the report to the banks pre-publication and as a result certain aspects were modified and edited. Similarly, the FCAC expressed surprise at how abusive bank complaint handling practices were, despite the fact that the FCAC is responsible for regulating these practices. The same can be said of the FCAC ECB report. How was ADRBO ever approved as an ECB based on the shocking findings in the report? As regards, regulatory enforcement intensity, the record speaks for itself. I don't think a reasonable person would argue that the FCAC Guides for ECB's and internal bank complaint handling meet international best practice standards for complaint handling.

FCAC takes in complaints from those who have been wronged but the results of the investigation are not revealed to complainants. I believe the FCAC should have an obligation to provide feedback to clients who may have been harmed by bank actions and inactions. This feedback would also provide valuable ammunition to consumers in their settlement of complaints with banks. I recommend that FCAC review its role in providing redress especially in the case of systemic issues.

In my view, it won't matter much what comes of this Finance consultation unless the FCAC steps up to the plate and effectively regulates the banks.

In summary, the bank client complaint handling system needs a major overhaul. The faster the better.

The consultation states: *Subject to the considerations below, the Department of Finance Canada intends to make public some or all of the responses received and/or provide summaries in its public documents.* " **All** comment letters should be posted on the Finance website with no censoring. Anything less than full transparency by the government would make this critical consultation a sham.

Permission is granted for public disclosure of this comment letter. Do not hesitate to contact me if further information is required.

Sincerely,

David Fieldstone BA (Econ) LLB

Retired Barrister and Solicitor