

October 14, 2021

Delivered by email: complaintsconsultation-consultationplaintes@fin.gc.ca

Director General
Financial Services Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin St
Ottawa ON K1A 0G5

Re: Response to request for comments on Strengthening Canada's External Complaint Handling System

The Ombudsman for Banking Services and Investments (OBSI) is pleased to provide our comments to the Department of Finance Canada on strengthening Canada's external complaint handling system for banks and their customers.

OBSI is a national, independent, and not-for-profit organization that helps resolve and reduce disputes between consumers and over 1480 banks, credit unions and financial services firms from across Canada in both official languages. We have been providing this service for over 25 years. As such, we are uniquely positioned to share our views and insights for this important consultation.

As long-time advocates of a single, independent Canadian financial ombudsman service, we support the central premise of this consultation to strengthen the external complaint handling system for banking consumers in Canada to address the deficiencies of the present system identified in the consultation paper. Better access to fair and independent ombudsman services is an important consumer protection measure that will also enhance the fairness, effectiveness, stability and prosperity of the Canadian financial services sector as a whole.

An accessible ombudsman service is an essential component of financial consumer protection and inspires confidence in the sector as a whole

Access to a fair, effective and trusted ombudsman service is recognized internationally as a vital component of a country's financial consumer protection framework because:

- It provides access to justice for consumers who find themselves in a dispute with their financial services provider
- It meets consumers' expectations of fair treatment and supports consumer confidence in the financial services sector
- It encourages effective firm-level complaint handling

- It provides information to regulators, industry participants and the public about challenging consumer experiences that feeds into a virtuous cycle of systemic improvement

Access to justice

Financial ombudsman services are necessary because other possible mechanisms of dispute resolution, such as the legal system or arbitration, are generally not efficient or effective for unrepresented consumers and those with modest claims – which represent the vast majority of financial services complaints. An ombudsman service is designed to be accessible, efficient and fair – meeting consumers where they are in their understanding of their problem and bringing knowledge and professional experience to bear in working to resolve the consumer’s challenge.

Meeting expectations of fair treatment and supporting consumer confidence

Financial services disputes are generally characterized by very significant asymmetries of information, power and resources – the products are complex and confusing, and the laws, regulations and obligations applicable to the industry are even more so. When consumers feel that things have gone wrong with a financial institution, they are often left frustrated, confused and disadvantaged. When working with institutions in such a highly regulated industry, they expect to be protected and treated fairly, and it is important from a public policy perspective that this expectation be met.

Ombudservices are designed to deliver accessible service and fair outcomes to investors and firms efficiently and effectively while addressing these disparities of power and information. Ombudservices also offer a non-adversarial approach to dispute resolution that aims to reassure, restore trust and preserve relationships where possible.

Consumer confidence is of paramount concern in the financial services industry, where broad public participation is necessary for the proper functioning of the sector. Without adequate safeguards in place when problems arise, this confidence can be undermined. Consumers reasonably expect that the financial services industry and the government will establish adequate systems to protect them when they encounter problems. When consumers know that they have an independent, professional ombudservice to turn to, they know that raising their concerns with their financial institution is not a futile exercise and that it can lead to positive outcomes for them and others with similar problems.

Encouraging effective firm-level complaint handling

The existence of a financial ombudsman in the system encourages firms to invest appropriately in internal complaint handling and to adopt best practices in resolving consumer complaints. When firms know that dissatisfied consumers can engage an independent professional ombudservice in the dispute, they have a strong incentive to deal with consumer problems in a manner that will withstand independent expert scrutiny. This encourages and incentivises fair treatment of consumers effectively without onerous regulatory supervision or intervention.

Financial ombudsman services also serve another important systemic function in the consumer protection framework by removing any economic incentives that firms may have to disregard or mishandle aggrieved consumers. By providing consumers with access to ombudsman services,

policymakers and industry leaders help level the playing field economically between responsible firms that acknowledge wrongdoing and compensate investors fairly and those that do not.

Providing information to promote systemic improvements

A further critical function of a financial ombudsman service is the role it plays in improving the system as a whole by sharing its data, knowledge and expertise. Information about consumer complaints is a critical tool for identifying systemic problems, improving complaint handling practices, and assisting consumers, firms and regulators to better understand the points of highest friction in the consumer experience and gain insight into potential improvements. To fulfil this role effectively, a financial ombudsman service needs to actively gather, analyse and share information for this purpose.

OBSI has a profound depth of experience in financial ombudsmanship and has assisted many thousands of Canadians

OBSI has been providing dispute resolution services to the Canadian banking and securities industry since 1996. In the 25+ years that we have been serving the sector, we have responded to over 100,000 consumers who have reached out to us for assistance, investigated and resolved over 7000 disputes between consumers and firms, and facilitated financial compensation of over \$40 million.

OBSI has also actively participated for many years in the International Network of Financial Services Ombudsmen Schemes, the worldwide association of financial services ombudsmen that facilitates cooperation and information sharing among its members to build expertise in external dispute resolution and develop international standards of recognized best practice.

This depth of experience has given us a unique perspective on the promise and challenges of financial ombudsmanship in Canada. Our experience informs our daily work, as well in our knowledge sharing efforts, and places us in a good position to provide our insights in public consultations such as this.

OBSI has modernized and transformed its systems and processes since 2015

Following the global financial crisis in 2009-2010, OBSI's case volumes increased by over 200% at a time when the organization had virtually no financial reserves and participating firms were strongly opposed to fee increases. Due to the overwhelming number of people seeking OBSI's help and the inability of the organization to scale appropriately, a backlog of investment cases developed which was not fully cleared until early 2015. Notably, there was no backlog of banking cases, even during those challenging times.

Since the clearance of the investment case backlog 2015, OBSI has examined the causes of its challenges following the financial crisis and focused on improving our internal infrastructure and external relationships for the purposes of modernizing the organization's practices, improving efficiency, maximizing value to stakeholders and minimizing enterprise risks. These improvements have included:

- **Modernizing organizational practices**
 - o Development of a five-year strategic plan

- New financial accounting system
 - New fee allocation methodology
 - Adoption of completely updated Terms of Reference for the organization
- **Improving efficiency**
- Development and launch of a new case management system
 - Digital transformation including the complete replacement of office-based mainframe server and data back-up mechanisms with cloud-based computing and data management systems and the replacement of all staff CPU-based computers with laptop computers
 - Replacement of all landline-based telephone infrastructure with VOIP-based communications systems
 - Development and launch of a new internal intranet knowledge management system
 - Development and launch of new online automated case opening forms and introduction of digital document signing
 - Implementation of a new expedited investigations process
 - Adoption of new, higher service delivery standards for quality and timeliness, exceeding regulatory requirements
 - New office premises with modern and flexible workstation and meeting room capacity
- **Maximizing value to stakeholders**
- New user-friendly and secure website with new hosting service provider
 - Rewriting of all OBSI's standard communications to adopt plain language principles and adjust for tone and accessibility, including a new consumer Consent Letter (the document which establishes the terms of our service with each consumer)
 - Development and launch of a Firm Portal to facilitate secure document upload and on-demand information sharing with participating firms
 - Development and launch of the new Consumer Portal to give consumers secure document upload capability and 24/7 access to key information about their case
 - Launch of the Firm Helpdesk to share expertise and information with participating firms
 - Launch of new communications strategies including through social media platforms, quarterly newsletters, and increased publications of bulletins, case studies and approach documents
- **Minimizing enterprise risks**
- The development and maintenance of an enterprise risk framework
 - Building of fully funded financial reserves and reserve fund sufficiency assessment process
 - Implementing a program of independent external IT security maturity audits
 - Entering into new IT managed services and IT helpdesk vendor relationships

Throughout this period of substantial renewal our employee engagement levels have also increased significantly and are well above comparator benchmarks.

As an organization, we recognized that our operations are counter-cyclical, and that economic downturn or other external negative shocks to the financial services sector would inevitably result in higher complaint volumes and place increased pressure on us with respect to workloads, external scrutiny and stakeholder relationships. We were in the fortunate position to be able to substantially renew our infrastructure and processes during a period of relative economic calm.

OBSI's improved systems have proven effective as the pandemic has led to highest-ever complaint volumes

In the wake of the coronavirus pandemic and the related economic challenges and uncertainties, demand for OBSI's services has surged dramatically.

In 2021, OBSI has experienced the highest levels of demand for our services in our 25-year history. This year, we will respond to over 7500 consumer complaints and open approximately 1080 investigations – higher volumes than we experienced even in the aftermath of the global financial crisis in 2009-2010.

Throughout this challenging period, the improvements and investments we have made as an organization over recent years to improve efficiency and develop scalable systems in preparation for such an event have proven effective and sustainable. In 2020 and 2021, we have maintained all our timeliness and quality service standards and have not had a case backlog at any time.

We are confident in our continued ability to scale our systems and processes to meet the needs of Canadians and the financial services sector into the future.

Consultation questions

Our comments below respond directly to the specific queries posed in the Department of Finance's recent consultation document, *Strengthening Canada's External Complaint Handling System*.

Guiding Principles

QUESTION 1: ARE THESE PRINCIPLES APPROPRIATE TO GUIDE FUTURE POLICY DIRECTIONS ON THE STRUCTURE AND KEY ELEMENTS OF THE ECB SYSTEM IN CANADA?

The consultation document suggests that, as guiding principles, the external complaint handling system in Canada should be: accessible, accountable, impartial and independent, timely and efficient, and impactful decisions.

All of these principles are laudable and important for an external complaint handling system as described. However, we observe two notable omissions: fairness and public interest.

Fairness is a fundamental principle of financial ombudsmanship

The concept of fairness is central to the work of a financial ombudsman - and consumer dispute resolution more broadly - as highlighted by the [G20 High-level Principles on Financial Consumer Protection](#), developed by the Task Force on Financial Consumer Protection of the OECD Committee on Financial Markets.

The fundamental importance of fairness has also been emphasized by the International Network of Financial Ombudsman Schemes as one of six fundamental principles outlined in its publication [Guide to Setting up a Financial Services Ombudsman](#).

The new consumer protection framework of the Bank Act itself is placed under the heading “Fair and Equitable Dealings”, highlighting the inherent meaning and importance of fairness as an organizing principle of consumer protection.

Fairness encompasses some elements of the other proposed guiding principles, such as impartiality and independence, but is broader and inherently more meaningful than these principles in isolation.

Fairness in this context has two distinct elements – procedural fairness and substantive fairness.

- **Procedural fairness** – refers to the procedural elements of a process that ensure that both parties will have appropriate access to a fair decision. The key elements are: the right to know the case against them, the right to be heard, and the right to an impartial decisionmaker.
- **Substantive fairness** – means that there are just, fair, and equitable reasons for the decision made in a case. While substantive fairness may seem inherently subjective in nature, the legal system in Canada and elsewhere has very well developed approaches to commonly understood elements of substantive fairness which, broadly speaking, are grouped into the legal concept of “equity”. Equity includes concepts which generally accord with a lay person’s understanding of what is fair as contrasted to what is unfair. This encompasses ideas such as: employers should be liable for the actions of their employees; losses should be shared among all those who are responsible; and claims need to be made in a reasonable time, among many other similar concepts.

As an alternative to the court system, financial ombudservices in Canada and around the world will generally consider and apply rules of law and equity when making recommendations in a case. For example, an element of equity that would typically be considered is the rule of vicarious liability – or that an employer should be liable for any wrongdoing of their employee in the course of their employment. Concepts like ratification or contributory negligence on the part of a complainant would also typically be considered, among other concepts.

Fundamentally, consumers and firms have a central expectation of fair treatment in any dispute resolution process, and the principle is inherent in the work of a financial ombudsman.

Serving the public interest is a fundamental principle of financial ombudsmanship

As described above, financial ombudservices play an important public interest role – by providing access to justice, meeting consumers’ expectations of fair treatment, supporting consumer confidence in the sector, encouraging effective firm-level complaint handling, and sharing of knowledge and expertise with consumers, industry participants, regulators and the public to improve the system as a whole.

All of these functions are inherently public-interest functions and, to fulfil its role effectively, a financial ombudsman service needs to have a public interest mandate as a guiding principle.

Structure of Canada's external complaint handling system

QUESTION 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?

The ECB structure that would best meet the needs of Canadians is a single financial ombudsman service and that is mandated and accountable to a government or regulator.

Competition between ECBs is not in the public interest and raises a

reasonable apprehension of bias. There are five key problems with ECB competition:

- Consumer confusion
- Real and perceived systemic bias towards the banks who choose the ombudsman
- Gaps for cases that involve multiple institutions
- Diminished informational value of disaggregated data
- Reduced efficiency of scale and scope

Consumer confusion

The existence of multiple ombudsmen for banking complaints in Canada is confusing to consumers, and particularly so when they are stressed by a challenging unresolved problem with their financial institution. Such confusion exacerbates frustrations and can lead consumers to abandon their positions, leaving disputes unresolved, or to a loss of confidence in the system.

This problem is particularly highlighted when consumers have accounts at multiple financial institutions and find that the dispute resolution process is different for each institution, or when they encounter a problem with a transaction that involves two different institutions (such as a transfer between institutions), when each institution uses a different ombudsman service.

Systemic bias towards the banks who choose the ombudsman

It is clearly the case that when one party to a dispute, particularly the larger more powerful party, is choosing the decision maker, the interests of the other party to the dispute may be compromised. There is a risk of actual bias in favour of the choosing party (both conscious and unconscious), as well as the

incentive to establish policies and procedures that systematically prioritize the interests of the more powerful party. There also is certainly the risk of a reasonable apprehension of bias. Such real and perceived biases are deeply undermining of the effectiveness of the system and confidence in it.

The system of ECB competition is one in which banks are the paying “customer” of the ECB, and therefore the basis upon which the ECBs will compete or seek to differentiate themselves from one another will naturally be those criteria that are important to the banks that choose which ECB to support.

Such criteria may include lower cost, stricter application of mandate rules to reduce the number of cases opened, fewer investigations, less rigorous investigations, less public transparency, less investment in consumer-centric value process enhancements, and less investment in public interest initiatives. Such criteria naturally also include preferential outcomes for banks. In fact, OBSI and ADRBO can be distinguished from one another across all of these criteria.

While statements are sometimes made that ADRBO and OBSI case outcomes are similar, this is not true, and only appears to be true when cases that are closed by ADRBO immediately following case intake without conducting an investigation, called “initial views”, are not included in the analysis. In 2020, approximately 70% of cases opened by ADRBO were closed in this manner without investigation. A close examination of the public reporting of both services makes it abundantly clear that case outcomes are not the same between the two ombudservices. The annual reports reveal that in 2020:

- At OBSI:
 - All cases that are in mandate are investigated, with some less complex cases investigated through an expedited process
 - 314 banking cases closed during the year
 - 92 of these cases ended with monetary compensation (a figure that includes settlements and reinstatements of firm goodwill offers)
 - Therefore, **29% of OBSI banking complaints closed with compensation to the consumer**
- At ADRBO,
 - 528 cases were closed during the year
 - 367 were closed as initial views without investigation, 143 closed following investigation, 16 were settlements, and 2 cases were abandoned
 - 76 were closed in with compensation to the consumer (including the 16 cases that settled, 15 decisions in favour of consumer, 27 goodwill offers reinstated, and 18 split decisions)
 - Therefore, **14% of ADRBO cases were closed with compensation to the consumer**

This outcome differential is significant and results from multiple procedural practices that illustrate what can be expected when organizations face incentives to prefer the interests of one party over another.

One can imagine the processes that would develop in a system with competitive ombudservices if the consumer, rather than the financial institution, were empowered to choose the service they wished to resolve their complaint. Neither scenario is desirable if fair dispute resolution is the intended outcome.

A single ombudsman will be able to establish policies and procedures that fairly meet the interests of both parties and will be accountable for its public interest mandate to regulators tasked with overseeing its performance standards. This is the ECB system structure that would best address the deficiencies identified in the FCAC report and most effectively uphold the guiding principles outlined above.

Gaps in cases that involve multiple institutions

Consumer complaints can involve transactions that take place between multiple institutions, for example transactions that involve the transfer of money from one institution to another.

When different institutions use different ombudservices, consumers are required to bring their complaint about a single transaction to multiple different ombudservices, none of which have the mandate to examine the transaction as a whole. This is ineffective and unresponsive to consumer need and does not accord with the fundamental principles outlined above. This system also introduces the prospect that different ombudservices will approach the issue differently and reaching different conclusions in the case.

Enhanced informational value of aggregated data

Additionally, there are practical systemic advantages to having one financial ombudsman rather than multiple ombudsmen. A key advantage is the informational benefit of having aggregated data. When data is gathered by multiple service providers in any industry, meaningful aggregation can be difficult, and valuable insights can be lost. In the case of financial ombudsmen, trends and systemic issues are more likely to be identified accurately when data is aggregated in one source.

Efficiencies of scale and scope

A further benefit of a single ombudservice for all banking complaints in Canada is the significant efficiencies of scale and scope inherent in providing such services to the industry as a whole. Investments in appropriate technology, investigator training, reporting and communications efforts represent fixed costs that can be effectively shared among all participating institutions, reducing costs overall. Scale also provides the ombudservice with a broader and more diversified workforce, allowing for more efficiency in case assignment and handling and improving the system for all participants.

Profit structure of an external complaints body

QUESTION 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?

The profit structure of an ECB certainly impacts its perceived independence and impartiality because a profit motive inherently favours the interests of the payor and the owner over the interests of any other party or the public.

A profit motive also has a direct impact on the ECB's approach to questions such as determining the appropriate level of investment in training and infrastructure, the level of resources that should be

dedicated to the dispute resolution process, and the amount of resources that should be dedicated to communications and public awareness.

A profit motive is not consistent with operation in the public interest as described above. Public interest measures can be costly and are therefore not consistent with profit maximization.

Funding model of an external complaints body

QUESTION 4: TO WHAT EXTENT COULD AN ECB'S ASSESSMENT FORMULA IMPACT THE REAL OR PERCEIVED IMPARTIALITY AND INDEPENDENCE OF THE ECB?

OBSI's funding model is based on fees that are set for each industry sector on the basis of the number and complexity of cases received from each sector in the prior year. The firms within each sector then contribute their fees on a pro rata

basis for our services, based on firm size. This is consistent with our public service mission as an ombudservice because it:

- Shares the cost of the ombudservice among all participants in the industry, which is appropriate because the of the benefits of the ombudservice for the industry as a whole as described above
- Introduces an element of risk sharing among participating firms
- Reduces the incentive firms may have to deflect cases away from the ombudservice or fail to openly refer their clients to the service

An alternative model, such as one that charges firms on the basis of the number of cases opened or the hours spent on a given case, may focus resources on higher dollar-value complaints on the basis of economics alone. This is not consistent with the public interest purpose of the ombudservice, which places a value on fair dispute resolution and information gathering, notwithstanding the amount of money in dispute in the case. This is appropriate because fair treatment of low-amount cases remains important for both consumer confidence in the system and for the identification of systemic issues.

Scope of external complaints body function

QUESTION 5: WHAT ARE THE BENEFITS TO CONSUMERS FROM A BANKING ECB THAT PROVIDES NON-BANK DISPUTE RESOLUTION SERVICES? ARE THERE DRAWBACKS?

There are significant systemic advantages from having one ombudservice provide dispute resolution services to consumers of both federally regulated banking and provincially regulated securities industries. Combining these services

is beneficial for many reasons, including:

- Reduced consumer confusion and alignment with industry representations
- Reduction in gaps between ombudservices

- Enhanced information value of aggregated data
- Improved efficiencies of scale and scope

Reduced consumer confusion and alignment with industry representations

A single ombudsman for banking and securities complaints helps to insulate consumers from the complex and fragmented regulatory structures that characterize the financial industry, reducing confusion and better aligning with consumers' own understanding of the financial services they use.

In the modern context, banking and securities products and services are marketed under unified branding and cross-selling is common. In our experience, exceptionally few consumers have any understanding of the regulatory and corporate structures underlying their relationships with their bank and its many provincially regulated subsidiaries. Introducing these concepts to consumers when they are experiencing challenges with one or more bank-owned subsidiaries is confusing and exacerbates the consumer's frustrations with the system as a whole.

Reduction in gaps between ombudservices

Many consumer complaints involve transactions that take place across multiple channels, for example transactions that involve both a bank and its securities subsidiaries, like the transfer of money from a bank account to an investment account or the sale of a GIC to fund a securities investment.

When ombudservices are not unified, consumers may be faced with the prospect of bringing their complaint about a single transaction to multiple different ombudservices, none of which have the mandate to examine the transaction as a whole. This is ineffective and unresponsive to consumer needs and does not accord with the fundamental principles outlined above. This also introduces the prospect of different ombudservices reaching different conclusions and recommending different measures be taken by the financial institution involved.

Enhanced informational value of aggregated data

Additionally, there are practical systemic advantages to having one financial ombudsman rather than multiple ombudsmen for different financial sectors. A key advantage is the informational benefit of having aggregated data. As described above, when data is gathered by multiple service providers in any industry, meaningful aggregation can be difficult, and valuable insights can be lost. In the case of financial ombudsmen, trends and systemic issues are more likely to be identified accurately when data is aggregated in one source.

There is value in one organization being able to make meaningful observations about the consumer experience across different sectors and jurisdictions. There are also product types that bridge both banking and investments, such as registered accounts like as TFSA's, RESP's and RRSP's. When common concerns can be identified across these sectors, they can be reported on for the benefit of the system as a whole, as we did, for example, in our recent [Firm Bulletin on helping RESP consumers avoid withdrawal mistakes](#).

Efficiencies of scale and scope

A further benefit of combined ombudservices are the significant efficiencies of scale and scope inherent in providing such services to multiple financial sectors. Investments in appropriate technology, investigator training, reporting and communications efforts represent fixed costs that can be effectively shared across sectors, reducing costs for all users of the system. There are also benefits and synergies to be realized from cross-training investigators in multiple financial sectors, which improves their knowledge and understanding and increases the versatility of the organization, improving efficiency for all participants.

Complainant assistance

QUESTION 6: SHOULD AN ECB BE REQUIRED TO PROVIDE COMPLAINANT ASSISTANCE, AND WHAT TYPE OF COMPLAINANT ASSISTANCE SHOULD BE PROVIDED?

Complainant assistance is an essential aspect of an ombudsman service, particularly in the financial ombudsmanship field, and the guiding principle of accessibility is not meaningful without it.

In our experience, consumers generally have a very superficial level of understanding of the laws and regulations that apply with respect to banking products and services and are not well positioned to understand their rights and obligations pursuant to the agreements typical in the sector.

Additionally, we note that a deep understanding of financial services rules and regulations is not universal among industry participants, and our team are regularly called upon to assist both consumers and firm representatives in understanding their respective legal and regulatory positions, rights and obligations.

A hallmark of a financial ombudsman service, as opposed to a dispute resolution provider, is that an ombudsman meets both parties where they are and has systems in place that can meet the needs of unrepresented or less sophisticated parties while preserving independence and impartiality.

Providing assistance to parties in understanding or framing their complaint does not necessarily impair independence and impartiality. For an ombudservice, assisting a party with complaint framing and understanding of the rules and regulations that are relevant to their case is essential to facilitating a meaningful dialog with the party and ultimately in helping them to understand the outcome of their complaint.

This is distinguishable from advocacy or identification with a party. The assistance provided by an ombudservice generally involves listening and explaining, and often helping both parties understand the outcome of a complaint investigation. It is commonly the case that when a recommendation is made, the party with the negative outcome believes that the ombudservice is advocating on behalf of the other party. Banks may feel that the ombudservice is advocating for the consumer when compensation is recommended, and similarly, consumers may feel that the ombudservice is advocating for the bank

when compensation is not recommended. In both cases, however, the ombudservice is in fact advocating for the outcome it believes is fair in all the circumstances of the case.

External complaints body recommendations

QUESTION 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.

In the twenty-five years that OBSI has been working with banks and their customers to resolve disputes, we have never had a bank refuse to make an offer to its client in accordance with our recommendations. This is in contrast

to our experience with securities firms. With respect to our securities mandate, OBSI has long sought greater powers to secure redress, chiefly because the current system of “name and shame” gives firms the ability to act on the economic incentive they have to offer to settle complaints below (sometimes far below) the compensation amounts that we consider fair in all the circumstances of the case, and leaves consumers with no realistic option but to accept such settlements. The practice of name and shame, when it does occur, can also unfairly tarnish public perception of the industry as a whole.

While we have not experienced similar challenges with banks - and are generally of the view that the current system of name and shame is effective in allowing us to reach fair resolutions in disputes between banks and their customers - we are aware of the public perception of our non-binding mandate as less effectual or weaker than a binding mandate. It is not uncommon for our non-binding mandate to be referred to as “toothless”.

Because of the importance of this issue from the perspective of public perception, we are in favour of a binding mandate for banking disputes, though it is our view that such a mandate will not practically impact our ability to achieve fair dispute resolution for Canadian banking disputes.

External complaints body governance structure

QUESTION 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?

OBSI’s board is comprised of ten directors, seven of whom are independent community directors with no industry affiliation. One community director is designated as a Community Interest Director and is specifically selected on the basis of their knowledge and experience of

consumer advocacy issues. The remaining three directors are selected by the board from among nominees put forward by the Canadian Banker’s Association, Investment Industry Regulatory Organization of Canada, and the Mutual Fund Dealer’s Association. All directors, regardless of affiliation, are required to act in the best interests of OBSI while engaged in OBSI governance.

OBSI's board of directors is also advised by our Consumer and Investor Advisory Counsel, a body made up of consumer advocates whose role is to ensure that our board is aware of important and emerging consumer concerns when making governance decisions.

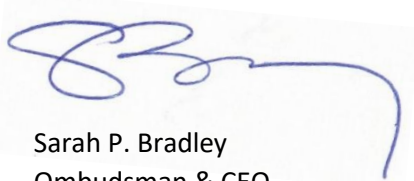
In our view, this partially representative board governance structure is effective and appropriately meets the needs of OBSI as an independent public interest organization. OBSI's governance processes are highly transparent, as illustrated by the publicly available information on our [governance webpage](#).

The governance structure of any public interest ombudservice should be fully independent and transparent. This is necessary to provide assurance to the public and regulators of the organization's ability to act impartially and to systematically adopt processes that are reflective of the guiding principles outlined above.

We are strongly of the view that a majority of the directors of a financial ombudservice – as well as the owner of a financial ombudservice if it is a for-profit corporation – should be independent of industry or consumer advocacy affiliation, but that the participation of a minority of directors with such affiliations in the organization's decision-making process is beneficial to all parties.

Thank you for providing us with the opportunity to participate in this important consultation. We would be pleased to provide further feedback to the Department of Finance at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SB', with a long horizontal flourish extending to the right.

Sarah P. Bradley
Ombudsman & CEO