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

complaintsconsultation-consultationplaintes@fin.gc.ca

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#_Toc54863836

Thank you for the opportunity to provide an input on these proposals.

To ensure transparent consultation of all views I agree to the Department of Finance sharing my **“unedited”** communication and posting on the Department of Finance website on an **“as received basis”** to allow any other contributors the opportunity to review my input on the issues before they comment, if desired. Should the Department of Finance decide not to make this communication **“public”** I respectfully request that no material or references to my communication be made in any public releases by the Department of Finance.

At the outset I always struggle with the level of detail I should provide, or better stated how much time should I spend, for the following reasons:

- Many consumers never even get to an ECB as they MUST deal with the financial institutions internal ombudsman process first which is very stressful and complex for most consumers. Most consumers do not go any further as the external process is even more daunting for them and if the internal process offers any financial quantum the consumers feel that they have won all they can get. As such, the **financial institutions internal complaint process should also be revamped as consumers are losing out on those processes.**
- Reinforcing the above point, the Financial Consumer Agency of Canada (“FCAC”) at hyperlink <https://www.canada.ca/en/financial-consumer-agency/programs/research/operations-external-complaints-bodies.html> released a review that highlighted the fact that of an estimated 5 million complaints in 2018 only 500 were investigated by an ECB. I am confident that in and of itself in potentially short-changing Canadian consumers of funds they require as the financial institutions internal complaints process acts to reduce costs.
- There have been many campaigns over many years asking for a single not-for-profit organization to act as the ombudsman for the retail banking sector across the country. The Canadian Association for Retired Persons (“CARP”), the Consumers Council of Canada and the Canadian Foundation for the Advancement of Investor Rights (“FAIR Canada”) launched a letter writing campaign to parliamentarians to call on them to act and protect consumers. Please refer to hyperlink <https://www.newswire.ca/news-releases/consumer-advocates-launch-campaign-calling-for-one->

banking-ombudsman-696962501.html for one such campaign. Fast forward, approximately three (3) years later the same consultation is being requested again.

- Fair Canada at hyperlink <http://faircanada.ca/wp-content/uploads/2012/07/Comment-letter-Finance-reg-ext-complaint-body-proposal-July-2012.pdf> made comments to the Department of Finance in July 2012, **only nine (9) years ago**. When I read the comments with respect to an External Complaints Body (“ECB”) the vast majority of the recommendations are still valid today.
- The Department of Finance (“Finance”) has I am confident received many comments regarding an ECB and most recently engaged many experts over an extended time frame to study the ECB issue once again to propose an ECB that would address the guiding principles of:
 - **Accessible:** complaints should be easy to understand, available in French and English, and free to consumers.
 - **Accountable:** ECBs should be subject to regulatory overview and accountable to their stakeholders.
 - **Impartial and independent:** complaints resolution should be objective and free from undue influence and conflicts of interest.
 - **Timely and efficient:** complaints should not face undue delays in their resolution.
 - **Impactful decisions:** customer complaints should be genuinely resolved and banks should adhere to their decisions.

At a strategic level, subject to the caveats above, what I have been able to ascertain, unless I have missed something, are the following points with respect to your recommendations being:

- The majority of consumers filing complaints are seniors who lack the financial resources, energy, and potentially have underlying health related issues that limit their ability to file legal complaints. As most seniors are retired, they also lack employment income as they are on fixed pensions and any losses that the complaint system does not fairly deal with result in potential reductions in their standard of living. In addition, most seniors are focused on leaving money in an estate for their successors hence they are even more concerned about having to spend additional monies to try to get monies back that were lost.
- Seniors represent the population segment with the most financial resources and as such are targeted by financial institutions and investment advisors to get as clients as higher management fees can be earned due to higher investable assets.
- Seniors represent the population segment that is for whatever reasons more trusting which increases the likelihood that they will get into investments that do not match their risk profile which will potentially increase investment losses magnifying the need for an independent ECB not a financial institution lap dog out to protect the financial industry. I would even suggest that seniors should receive more consideration than regular investors due to their advanced age that could diminish decision making ability.
- I recommend Finance reach out to individuals that have ECB experience. From my own experiences, I engaged an ECB and it was a very stressful, onerous and a time-consuming process fraught with rules/regulations that in my opinion, benefited the investment industry. On conclusion, I was left with the belief that my issue settlement was lowballed. However, I accepted

the settlement proposal, that by the way the financial quantum offered was never explained in writing. I did not understand the financial settlement proposal but I was exhausted after dealing with the issue for an extensive period of time and the only other alternative was litigation, which everyone knows is very expensive for most consumers, so I accepted the proposal. If recollection serves me correctly the financial settlement took into account our ability to recover from the loss which was a criterion that I totally disagree with.

- What confidence would any reasonable person have with an ECB that is chosen by the financial institution that adjudicates complaints against themselves?
- How impartial are the current approved ECBs that are funded by the financial institutions? Why should a financial institution also be allowed to set the terms of ECB engagement? That is totally inappropriate and impartial.
- As the ECB's are funded by the financial institutions that use them would that be a conflict of interest or a perceived conflict of interest on every case?
- As ECB's are selected by financial institutions is it a reasonable conclusion that the financial institutions will select the ECB's that provide the most favourable result (most favourable representing less cost)? I would expect a financial institution to select an ECB that is costing them the least.
- ECB's decisions are not binding. That in and of itself is very disconcerting for consumers and it also facilitates lowballing of settlement offers.
- ECB's reported no systemic banking issues in 2020. It is unreasonable to conclude that all Canadian financial institutions had no systemic issues in 2020? That in and of itself points to serious problems with financial institution selected ECB's.
- Is it reasonable to conclude that financial institutions will play multiple ECB's off against each other with the implied suggestion that if too many decisions are not favourable to the financial institutions the financial institutions may take their business elsewhere? This process will not benefit consumers. In fact, some financial institutions have ceased using The Ombudsman for Banking Services ("OBSI") as the decisions are better for them using ADR Chambers Banking Ombuds Office ("ADRBO").
- Where is the FCAC oversight considering that the FCAC accepts an ECB model that allows financial institutions to select the ECB, to fund the ECB's, to use voluntary codes as opposed to rules and/or regulations, and does not require the ECB's decisions to be binding. Given the foregoing how can the FCAC defend its mandate that it is really acting in the Canadian consumer's interests. As a consumer I do not see the FCAC as my advocate.

Responses to Questions

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

How can an ECB system where financial institutions choose the ECB's, fund the ECB's, and ECB's decisions are not binding be considered as impartial and independent? The stakeholders of the ECB's are the financial institutions and it is very clear that the ECB's are accountable to the financial institutions. ECB's are clearly not accountable to consumers as the financial institutions control every aspect of the ECB's operation. In addition, consumers should not be forced to use the internal

complaint process first as that may encourage financial institutions to settle unreasonably although with expediency.

As to accessibility the process needs to be more consumer focused as opposed to appear as being in the financial institutions corner.

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?

One ECB for all Canadians with the ECB funding by way of a model that requires all financial institutions to contribute at a base contribution amount adjusted for additional contributions based on use of the services above the average to encourage financial institutions to improve. I used the OBSI and I am of the opinion that the OBSI model could function more effectively to assist consumers with the right modifications.

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?

A profit driven ECB engaged by a financial institution has a real and a perceived impact on impartiality and independence. Financial institutions, being profit driven entities, will use the ECB that provides them the best outcome being the least cost which will potentially be detrimental to consumers. What reasonable consumer would have the opinion that an ECB that gets paid by the financial institution is impartial and independent? A profit driven ECB would in all cases work to reduce the claims made against the financial institution which would leave consumers with potentially less financial recovery. In cases of older consumers on fixed retirement incomes this could be life altering. In all cases all consumers would be unhappy with a process where the financial institution that caused the loss used their ECB to adjudicate the loss by doing everything possible to reduce the financial institutions exposure.

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

The assessment formula selected should not be related to the number of cases adjudicated. The ideal formula would be the financial institutions being charged a monthly levy based upon the number of customers and the products that the customers are invested in. For example, if a customer has all their investments at the financial institution the financial institution generates fees on these products that could result in consumer losses so they should be required to pay more into the ECB pool. An additional true up can be made at the year end to charge financial institutions more ECB fees if they exceeded the average complaints in the year which would reduce the funding charge next year for all financial institutions including themselves. This formula would ensure impartiality and independence of the ECB in consumers eyes as long as it was communicated.

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

One ECB operating for all financial institutions and investment operations could provide detailed integrated information to any/all regulatory bodies on any issues required for whatever reasons especially recognizing the drive by financial institutions to also get their clients investment portfolio business. In fact, financial institutions will also lend their customers more funds if their customer investments are being managed by the financial institution which could result in a mix match of investment risk.

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

The only answer is YES. With increased financial product complexity and financial institutions drive for more senior's investment portfolios, and recognizing that seniors may have diminished mental capacities, many financial consumers may not be capable of articulating their complaint to their ECB (financial institution) and would benefit from complainant assistance. This is further supported by the requirement that claims have to be filed within time constraints and the interpretation of applicable rules and terminology is increasingly complex for most individuals, let alone seniors.

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.

ECB decisions **MUST** be binding on financial institutions. To comply with the guiding principles, an ECB supposedly being impartial and independent must ensure that their decisions are binding on financial institutions. If decisions are non-binding there would be incentive for ECBs to lowball the decision amounts as there is ample evidence that consumers lack of financial knowledge and resources coupled with a weak regulatory environment will strongly induce consumers to take the first offer. Financial institutions I trust have data that supports the fact that most consumers do not want to challenge outright complaint rejections or low settlement offers as their initial loss of money would encourage them to accept anything to put the issue behind them as in most cases, due to the requirement that they use the internal financial institution process and were already rejected by the respective financial institution's internal complaint process and at this point any financial quantum looks like a win.

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?

ECB board composition is key to the success of the ECB. ECB board selection dealing with consumer issues should be majority composed of board members with strong consumer protection backgrounds. The board ECB governance is key to success and consumer confidence just as governance is key to the success of all corporations. Proper governance and public transparency of the process, will translate into the ECB being trusted by financial consumers. Appropriate Board committees should be mandated to ensure that there is a review function undertaken at pre-set

intervals to ensure compliance with the Board instituted strategies, policies, and procedures. Regulatory oversight of the ECB should be established with clear guidelines as to how this oversight will be conducted and at what frequency. The ECB itself should also have their own internal ombudsman, that reports directly to the Board, that is charged with reviewing any decisions made by the ECB should consumers feel that they were still treated unfairly. I trust this would not be used very often if the ECB had open communication with the consumers as to how the decision was reached.

Hopefully, this feedback will assist Finance with the implementation of an ECB that is consumer focused especially recognizing that Canada has an aging population and that older consumers are the most vulnerable and are most impacted by financial losses.

Please feel free to reach out to me if you require any clarification.

Rick Price