

Response to Consultation 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?”)

I am a dispute resolution professional who, among my professional activities, has investigated banking complaints at ADR Chambers Banking Ombuds Office for a number of years. Obviously that means I am in favour of an ECB structure that has more than one complaint handling service. My reasons for this are below.

I urge you to consider my comments in an objective way, on their merits, not discounting them due to my perceived bias.

Please keep my identity and personal identifiers confidential.

### **Disadvantages of a Monopoly in Achieving all of the Guiding Principles**

If there were only one complaint handling service, it would open consumers and banks to all the disadvantages inherent in a monopoly. Conversely, when there is more than one complaint handling service, there is healthy competition that can only benefit consumers and banks.

Healthy competition is the best way to achieve all the elements of the guiding principles – accessibility, accountability, impartiality and independence, timely and efficient investigations and impactful decisions. If there is more than one complaint handling service, the regulator can use the best practices in each service as a model to achieve continuous improvement in the other service(s).

If there is only one complaint handling service, the regulator does not have a source of best practices in the Canadian context. It is not sufficient to try to apply international best practices, since they do not address the Canadian banking environment and may not be appropriate to apply in Canada.

### **Impartial and Independent ECB System**

Monopolies run the risk of developing “institution-speak” in handling complaints. Consumers have a number of ongoing issues about how banks do business. Over time, organizations tend to develop entrenched views within their organizations about how to deal with ongoing issues. This can compromise the impartiality of the organization as a whole and the independence of individual investigators who are seeking the best outcomes for investigations.

Consumers may consider that entrenched views in an ECB organization are not responsive to their needs. However, in a monopoly situation there may be limited capacity for alternate views. Having multiple ECB services means that the different organizations may have different legitimate views on how to deal with ongoing consumer issues, which can only benefit consumers and banks.

### **Timely and Efficient ECB System**

The volume of complaints in the ECB system will not stay constant over time. If there is only one ECB service, the timeliness and efficiency of investigations can be limited by the structure of that ECB organization.

An ECB service that uses salaried employees to do its investigations is likely to have only a limited ability to expand its capacity to respond in a timely and efficient way in periods when the volume of complaints is higher than average.

On the other hand, an ECB service that uses contract investigators who can be called upon to do more or less investigations as needed has a better capacity to respond to periods of high volume.

Having multiple ECB services with different organizational structures also enables investigations to be done by the best trained and knowledgeable professionals.

Looking at the ADR Chambers investigation workforce, it is comprised of dispute resolution professionals with many years of experience in complaint investigation, mediation, arbitration, adjudication and legal practice. Looking at my own experience, among other things I was the Ombudsman for a federal agency for 5 years, adjudicated cases in federal and provincial tribunals for about 15 years and practiced law in the federal government for about 20 years.

An organization composed of salaried employees cannot reasonably afford to hire a workforce of investigators with this degree of experience. On the other hand, ADR Chambers has demonstrated that it can do so using a contract work structure. This can only benefit consumers and banks.

