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Re: Strengthening Canada's External Complaint Handling System

October 14, 2021

C.A.R.P. (also known as the Canadian Association of Retired Persons) is a national, non-partisan, non-profit organization that advocates for financial security and improved health care for Canadians as we age. CARP White Rock – Surrey (CARP WRS) is the largest of five B.C. Chapters and is an active advocate on municipal, provincial and federal matters. CARP WRS advocates on behalf of older Canadians with all levels of government and collaborates with other organizations on health, ageism, housing, and financial issues.

CARP WRS is pleased to offer our comments to assist the Federal Government in Strengthening the External Complaint Handling System for Canada's Banks. We commend the government on taking action in this area and consent to the disclosure of our submission in whole or in part.

1. Question 1: Are the principles [stated in the consultation document] appropriate to guide future policy directions on the structure and key elements of the ECB system in Canada?

The consultation document lists a number of principles for an external complaint handling system (that it be accessible, accountable, impartial and independent, timely and efficient and issue impactful decisions).

In addition to these elements, CARP WRS believes that an external complaint handling system for Canada's banks must be fair, and must serve the public interest. We define these terms below:

Fairness: complaint handling must provide an equality of outcome to all participants. Whether the participant is a bank with billions of dollars in assets, or a senior dependent on Old Age Security, all parties to a dispute have the right to a fair outcome. We note that equality of outcome is not the same as equality of opportunity. Where one party has less information, less expertise, fewer resources, or poorer understanding, the external dispute resolver must provide that party with greater support to ensure both parties have equal access to a fair outcome.

Public Interest: An external dispute resolver has a key role to play in supporting financial markets and protecting those who invest in them. In practical terms, this means communication, education and outreach are key roles to be assumed by an external dispute resolver. CARP WRS believes that a systemic mandate, where findings of wrongdoing against one individual can be used to make all wronged individuals whole, is a key element of a public interest mandate.

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?

CARP WRS believes that Canadian Financial Consumers would be best served by a single Ombuds Office for Banks.

Several compelling reasons for this outcome were outlined in the FCAC report and quoted in the consultation document. Essentially, the FCAC noted that the current multiple ECB model is confusing, complex, inefficient, resource-intensive and likely to have a negative impact on consumers' perception of the system¹

¹ The relevant section from the consultation document is included here for reference.

"The multiple-ECB model is not consistent with international standards, particularly where banks – rather than consumers – choose the ECB. This model can have a negative effect on consumers' perceptions of the fairness and impartiality of external dispute resolution. This has the potential to undermine one of the principal purposes of effective complaint handling, which is to enhance consumers' trust and confidence in the financial system." (p. 28)

In addition to these very real and significant issues, there is an area of even greater concern. The consultation document quotes this conclusion from the FCAC review: "FCAC also **has concerns about whether the competition** between ECBs for member banks **is benefitting consumers**. FCAC notes that only 2 of the large six banks have elected to be members of the ECB that compares most favourably to international best practices, such as promoting accessibility by conducting active investigations." (pp. 28–29) (**bold added**)

The FCAC raises concerns about whether the current arrangement is benefiting consumers. CARP WRS emphatically believes it is not. CARP WRS believes the FCAC's concerns are fully warranted and indeed validated by the choice of dispute resolver adopted by the majority of banks.

The old saw "[the one] who pays the piper calls the tune" is being proved true year after year. By allowing banks to choose their dispute resolver, and forcing dispute resolvers to compete for banks' business, the existing system has perpetuated a race to the bottom in the delivery of complaint handling services. It is not only seniors but other banking consumers in Canada who are being harmed.

C.A.R.P. has long advocated for a sole ombuds office for banking and investments. For example, in September of 2018, C.A.R.P. noted:

"There is currently one ombuds office for investment services but two very different dispute resolution alternatives for banking services," said Wanda Morris, C.A.R.P.'s Chief Advocacy and Engagement Officer. "This makes no sense. Banking consumers need a single ombuds office that is transparent, accountable, and accessible to consumers."²

"The Agency is also concerned about the additional complexity and inefficiencies introduced by the multiple-ECB model. The challenge of raising consumers' awareness about their right to escalate a complaint is compounded when there are multiple external dispute resolvers. ECBs are challenged to make the required investments in processes and operations, given the relatively small number of complaint investigations they undertake on an annual basis." (p. 29)

"Regulatory supervision is more complicated and resource intensive when there are multiple ECBs that have adopted different practices, as operational differences can disguise compliance issues." (p. 29)

² <https://www.C.A.R.P.ca/2018/09/10/C.A.R.P.-issues-call-single-ombudsman-banking-investment-services/>

On November 1, 2018, C.A.R.P. issued a joint news release with other consumer advocacy groups. The release stated in part: C.A.R.P., the Consumers Council of Canada and FAIR Canada have been calling on the Government of Canada to protect banking consumers by mandating a single impartial, non-profit external complaints body – one that is not perceived to favour the banks.³

In 2018 C.A.R.P. reviewed its priorities and summarized its key goals in our Seniors Platform. In that document C.A.R.P. recommended:

Make the Ombudsman for Banking Services and Investments the single, binding dispute resolution body for banking and investment services⁴.

Even in 2012 C.A.R.P. was speaking out against the ruling that allowed RBC and TD to leave OBSI and choose their own external dispute body.⁵

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?

CARP WRS believes that services can be done for profit, or for the public interest, but if an organization is tasked with doing both, one will suffer.

It is inevitable part of running a business or managing a project that trade-offs must be made; a project cannot be delivered quickly, cheaply and with the highest quality.

CARP WRS believes Canadians needs an external dispute resolver that is a true ombuds office whose primary objective is to serve the public interest rather than its own bottom line. While cost control, operating efficiency and return on investment are important, Canada's seniors will be best served

³ <https://www.newswire.ca/news-releases/you-are-poorer-than-you-think-699276431.html>

⁴ <https://s3.amazonaws.com/zweb-s3.uploads/C.A.R.P./2018/10/C.A.R.P.-The-FACES-of-Canadas-Seniors.pdf> (page 7)

⁵ <https://www.C.A.R.P..ca/2012/03/23/obsi-and-the-national-securities-regulators-demise/>

when the external complaint handling body is a not-for-profit or government organization where these concerns are not the key drivers of the organization.

In addition, the for profit model inherently undermines consumer confidence as it raises doubts about the motives of the dispute service. Consumers are like a visiting hockey team where the home team always pays the referee; every call is suspect and the consumer is likely to feel the game has been rigged against them. A profit model may dissuade consumers from raising complaints and will likely reduce their satisfaction with the results when disputes are raised.

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

Many decisions made by external complaint bodies do not involve dollars and cents. Concerns about discrimination, violation of privacy or poor service can have a significant impact on a consumers' wellbeing without touching their wallets. Even matters that are financial can sometimes appear to be inconsequential, such as a fraudulent credit card transaction, small mortgage penalty or disputed interest payment.

CARP WRS notes that ADRBO charges its banking members an hourly rate for time spent on each investigation, while OBSI charges a flat rate to each member bank, regardless of the number of cases investigated. When a dispute resolver is billing for services by the hour, there may be real or perceived pressure for issues of no or small dollars to be dismissed or given short shrift. However, it is a key function of a true dispute resolver to ensure consumers have confidence in their financial system which requires looking at all issues, even those with no or only a small financial impact.

CARP WRS supports the existing system used by OBSI whereby all users of each class pay a base amount for OBSI's services, regardless of the actual amount of usage. This ensures that banks are not incented to dissuade consumers from using OBSI and ensures dispute resolver staff treat all complaints as potentially having merit.

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

One of the challenges of Canada's current financial system is its fragmentation. Our members may have a RRIF with a local firm which includes several GICS, various mutual funds and a segregated fund. If their GIC's are not with an OBSI member, the bewildered seniors may need to contact three separate complaint handling bodies to make a complaint. That does not serve them, or our financial system, well.

CARP WRS is a strong believer in the benefits of having a single external dispute resolver for all financial consumer concerns. CARP WRS believes there is significant benefit to the current situation whereby OBSI's banking customers can have a complaint resolved even if it includes both banking and investment products, which many typically do. We believe that further amalgamation is warranted and a single Ombuds Office should be responsible not only for all banks and investment firms, but also for credit unions, and companies offering segregated fund investments, mortgage brokering services and payday loans.

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

CARP WRS believes that an external dispute resolver must have fairness as one of its fundamental principles.

We can best comment on this question by reiterating our earlier point from the first question (above):

Complaint handling must provide an equality of outcome to all participants. Whether the participant is a bank with billions of dollars in assets, or a senior whose primary income is their Old Age Security pension, all parties to a dispute have the right to a fair outcome.

We note that equality of outcome is not the same as equality of opportunity. Where one party has less information, less expertise, fewer resources, or poorer

understanding, the external dispute resolver must provide that party with greater support to ensure both parties have equal access to a fair outcome.

A complainant should not have to hire a lawyer or advocate to ensure a fair outcome from an external dispute resolver. The onus is on the dispute resolver to help the consumer identify the issue, articulate it in a way which best makes their case and secure the information from the bank to determine if harm has indeed been caused.

Question 6: 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.

While CARP WRS has long campaigned for binding decision making for OBSI for investment firms, our understanding is that no bank has ever rejected an OBSI decision. A binding mandate for OBSI over banks as well as investment firms would be desirable to prevent possible future problems and to secure unified powers for OBSI across all its membership.

Although secondary to the biggest single change required (the return to a sole, not-for-profit ombuds office) affording the dispute resolver the power to make decisions binding on banks will increase consumers' confidence in the system and strengthen the perception that the two parties to a dispute are equal. This is particularly important for consumers when dealing with banks given the asymmetrical powers of the two parties in the relationship.

Question 7: 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?

The Board of Directors of an ECB plays a critical part in protecting consumers and safeguarding the integrity of Canada's banking system.

CARP WRS notes that OBSI has:

- A published Code of Conduct that all Directors must sign,

- Community Directors and Industry Representatives,
- A Community Interest Director,
- Public searches for new Directors, and
- Term limits for Board Members and Committee Chairs.

This transparent good governance is commendable and assures the public that the OBSI Board is free of conflicts of interest and ready to act in the public interest by offering a fair, accessible and impartial service. In contrast, little is discernable about the recruitment and retention of Directors for ADRBO. CARP WRS is concerned about potential conflicts of interest these Directors may have, especially as ADRBO is part of a larger, for-profit business that may pursue the same clients.

CARP WRS recommends that the practices voluntarily adopted by OBSI (listed above) be mandated for the external dispute resolution body for Canada's banks.

We thank the Federal Government for the opportunity to address these critical questions for consumer protection. We consent to the publication of any or all of this comment letter. Should you have any questions about our submission, or with further information, our contact information is included below.

Sincerely,

Ramona Kaptyn

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