

August 10, 2021

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: Strengthening Canada's External Complaint Handling System submission

**About C.A.R.P.**

CARP (formerly the Canadian Association for Retired Persons) is Canada's largest advocacy association for older Canadians with 320,000 members from coast to coast. As a non-partisan association, C.A.R.P. is committed to working with all parties in government to advocate for better healthcare, financial security, and freedom from ageism.

C.A.R.P. members also advocate for changes that will affect Canada's future seniors. As Canada's external complaint handling system in banking plays a significant role in the retirement security of Canadians, this issue is of great importance to C.A.R.P. Thank you for giving us this opportunity to comment.

**Background**

Free, fair, accessible, prompt and independent complaint handling is invaluable to seniors. Most seniors do not have the resources, stamina or time to pursue complaints in the legal system. Moreover, seniors are disproportionately represented in complaint statistics. For example, OBSI's analysis of demographics for complaints filed in 2017 and 2018 revealed that 38% of complaints were from those 65 and older, although this group comprises only 30% of the Canadian population.

The impact of financial loss on a senior can be a life-altering event. Retirees and vulnerable consumers need a well-functioning, independent external complaints body (ECB), as any undue losses they incur cannot be readily recouped.

C.A.R.P. urges the Department of Finance to be transparent and publicly post all comment letters.

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

A guiding principle is impartiality and independence. It reads, “There should be no undue influence or conflicts of interest, and service providers should be balanced and objective when dealing with a complaint.”

C.A.R.P. firmly believes that the current system of two banking ombudsmen – the not-for-profit Ombudsman for Banking Services and Investments (OBSI), and the ADR Chambers Banking Ombuds Office (ADRBO), which is for-profit – is flawed and not in the public interest. Banks’ freedom to choose which ECB settles disputes with their customers causes client confusion and poses an inherent conflict of interest, particularly where one earns a profit.

C.A.R.P. also believes Fairness should be added to the principles. A good reference illustrating the role of fairness in complaint handling would be the Forum of Canadian Ombudsmen’s *Statement of Ethical Principles*<sup>1</sup>. See [here](#).

### **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? – Question 2**

C.A.R.P. has long advocated for OBSI to be the single, unified and binding dispute resolution body for banking and investment services. Allowing multiple ombuds offices undercuts the effectiveness of the office, causes client confusion and poses a conflict of interest.

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

There is a real and perceived impact on the impartiality and independence of an ECB when it is profit driven. The conflict of interest occurs when an ombuds office, entrusted with settling disputes, is paid by, and earns a profit from, one of the parties to that dispute. Investors would be right to question whom the for-profit ECB is accountable to: consumers, or banks that pay for its services?

Canadians deserve an ECB that can challenge bank decisions without fear of losing a contract or embarrassing a bank. It is telling that the prevailing practice around the world is for financial ombudsmen to be statutory or not-for-profit.

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

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<sup>1</sup> 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.”

A formula based on a pooled assessment arrangement over multiple financial institutions is more likely to ensure resources are applied as necessary to obtain fair outcomes for ECB users than one based on individual case assessments.

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

C.A.R.P. believes an ECB that can handle banking and investment complaints is better prepared to address the future needs of financial consumers. The links between banks, and especially the Big Six, and investing are so intertwined that a common ECB makes a lot of sense. Such an arrangement would strengthen the relationship between the FCAC and CSA, leading to better regulations and enhanced consumer protection.

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

Yes. The banking complaint process is complex and difficult to navigate for anyone, particularly seniors and vulnerable consumers. C.A.R.P. firmly believes an ECB should be required to provide complainant assistance where needed. Many will require assistance on how to navigate the complaint system. Others may seek assistance on plain language interpretation, the applicable rules, timelines, or how to put together an effective and succinct complaint. This is especially critical given a poorly framed complaint can lead to an unfair compensation offer.

**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. – Question 7**

C.A.R.P. has long advocated for binding decision-making authority for OBSI. The current solution available to OBSI to name and shame firms is ineffective. The harms suffered by investors under the current regime have been well documented. As an example, earlier this year, an investor was denied any compensation despite OBSI recommending compensation of over \$50,000.

Losses and inefficiencies arise because:

- Firms can refuse to make the recommended restitution, causing direct harm to investors,
- Investors know firms can refuse, so may settle for a firm's offer of less than OBSI's recommended restitution (co-called low-ball offers), and
- OBSI knows firms can refuse, so may go through protracted negotiations to bring a firm on board, resulting in increased costs to all firms and delayed settlements for investors.

The impact of financial loss on a senior can impact their financial, physical and mental well being, particularly as seniors have less time and ability to make up for uncompensated losses.

**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? – Question 8**

Yes. Effective governance of an ECB is critical for consumer trust. In addition to individuals with strong backgrounds in consumer protection, the public must also be represented on the Board of Directors. Transparency is also 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. FCAC oversight is essential with public disclosure of oversight findings. In the securities sector, the CSA Joint Regulators Committee publicly issues an Annual report on its oversight of OBSI.

**Additional Recommendations for Action:**

**Commit to public consultation on the banks' internal complaint handling practices**

C.A.R.P. urges the Department of Finance to follow through on its commitment to undertake a public consultation on the banks' internal complaint handling practices. We believe such a consultation will reveal more consumer issues than were identified in the FCAC report, and will give the Department of Finance an opportunity to hear directly from Canadian citizens.

**Ban the use of internal bank ombudspersons**

C.A.R.P. has long advocated that the government prohibit banks from using the titles "ombudsmen" or "ombudspersons" for customer service employees paid by banks and financial firms. The terms infer an impartial dispute resolver, which is misleading. They can persuade customers to settle without any awareness of the conflict of interest behind a proposal, or lose time that could be spent pursuing other forms of redress before their time and energy runs out.

Respectfully submitted.

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