



Director General  
Financial Services Division  
Financial Sector Policy Branch  
Department of Finance Canada  
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**Re Submission:  
Department of Finance Canada, Banks' External Complaint Handling System**

Oct 14, 2021

Dear Colleagues

CanAge is pleased to provide its submission on the Banks' External Complaint Handling System. As a consumer organization, CanAge has a core interest in Economic Security - one of our 6 "Compass Points" in making Canada a more Age-Inclusive Country. We invite you to learn more about our evidence-based policy work at in our VOICES of Canada's Seniors: A Roadmap to an Age-Inclusive Canada ([www.canage.ca/voices](http://www.canage.ca/voices)).

We appreciate the opportunity to comment on Canada's federal financial consumer protection rules and how they can be improved to better serve to advance consumers' rights and interests when dealing with their banks.

**About CanAge**

CanAge is Canada's non-partisan, nonprofit seniors' advocacy organization which educates, empowers and mobilizes people on the issues that matter most to older Canadians. We work collaboratively with seniors, nonprofit organizations, governments, and the private sector to bring the voice of seniors to the table. We actively engage in policy creation with the government, work closely with stakeholders, and bring the voice of seniors to research and engagement. With head offices at the University of Toronto, CanAge also has teams in BC, Alberta, Ontario, Quebec, Nova Scotia and Newfoundland. CanAge has specific expertise in issues related to Economic Security, and dispute resolution.

CanAge is concerned with all Canadians as we age – not just seniors. Our comments should be read underscoring the Life Course approach that we bring to bear in our consumer advocacy.



## Background

We know that Canadian seniors are living longer lives and need to make savings stretch further in precarious economic times. Seniors, especially during the COVID-19 pandemic, are living at a material risk of outliving their tax-deferred savings.

Since early 2020, CanAge has been learning about the experiences of older Canadians through first hand conversations in email communications and through educational webinars and discussions. Here are some of the things that we have learned from the public:

- Many older Canadians are living precariously:
  - Pensioners, especially in circumstances of corporate insolvency, are coming up short.
  - Mandatory RRIF withdrawals are cutting deep into savings
  - Rapidly increasing cost of living is making it hard to budget and survive,
  - Many seniors are forced to stay in the workforce, living paycheque to paycheque
- Older Canadians find themselves in particularly vulnerable situations:
  - Many seniors face financial abuse at the hands of trusted family members or acquaintances
  - Many seniors are targeted for scams, especially if they've fallen for one already

**We also learned that the unclear, complex system for dispute resolution with banks is a deep problem for consumers, particularly for seniors.**

CanAge recognized that dispute resolution with financial institutions was an area of serious concern, noting that, "Consumers, especially vulnerable senior consumers, have very little power to resolve complaints against their financial institutions."<sup>1</sup>

**As a result we recommended making the OBSI the single dispute resolution provider for all banking services and investments in Canada and providing the OBSI with binding authority and a robust systemic mandate.** You can see a deeply analysis of our recommendations under "E" for Economic Security in our VOICES policy book at: [www.CanAge.ca/voices](http://www.CanAge.ca/voices).

CanAge was in support of the 2018 Government of Canada's Financial Consumer Protection Framework to help further protect consumers at the bank. In February 2020, the Financial Consumer Agency of Canada ("FCAC") released a report reviewing the complaint handling process in banking and the effectiveness of ECBs, which we had input into. In recognizing that

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<sup>1</sup> VOICES, *supra* at page 26



this current consultation is part of an ongoing process to inform the supporting regulations of the Financial Consumer Protection Framework, CanAge respectfully provides suggestions that respect the rights of all consumers, through all stages of life, but notes the key issues around seniors as a core area of concern for ECBs discussions.

### Why Focus on Seniors?

Seniors are primary consumers in the banking industry.

Based on case data collected from 2017 and 2018, 38 per cent of all complaints handled by the OBSI were made by consumers over the age of 60.<sup>2</sup> The OBSI found that the age groups of 50-59 and 60-69 lead demographics in complaints brought to the ECB. According to the OBSI, "Seniors are more likely to bring their complaint to the OBSI than younger complainants."<sup>3</sup> While mortgage products represent approximately ¼ of complaints for consumers between the ages of 60-69, credit cards are the product that the OBSI receives the most complaints about.<sup>4</sup> Statistics reveal that fraud is the most reported banking issue across all age groups. With this fact in mind, we are particularly sensitive to the prevalence of financial abuse perpetrated against older Canadians and the need to provide accessible dispute resolution services.

Canadians have already reported 40,341 potential cases of fraud this year. Last year, 42,164 Canadians lost \$106 million to fraud. So far, \$105.4 million has been lost to fraud this year. We know from seniors help lines that seniors are the constant target of fraudsters. We also know that seniors in Canada are particularly financially vulnerable.<sup>5</sup>

According to census data, in 2015, 1 in 5 Canadians over the age of 65 (approximately 1.1 million seniors) reported working during the year. That figure was the highest reported since the 1981 census. The percentage of seniors who reported working nearly doubled during the period of 1995 to 2015. Most important to consider, is that 43.8% of seniors who worked in 2015 relied on this employment income as their main source of income. This was up from 40.4% in 2005 and 38.8% in 1995.<sup>6</sup> In its 2019 report, the OBSI found that ⅓ of seniors who made a complaint were still working. Of this figure, more than 30% reported still being active in the workplace.<sup>7</sup>

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<sup>2</sup> Ombudsman for Banking Services and Investments - 2019 Seniors Report, <[https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/seniors-report\\_FINAL\\_EN.pdf](https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/seniors-report_FINAL_EN.pdf)>, page 4 ["OBSI"].

<sup>3</sup> OBSI, *supra* at page 11

<sup>4</sup> *Ibid*, page 12

<sup>5</sup> Canadian Anti-Fraud Centre, <<https://www.antifraudcentre-centreantifraude.ca/index-eng.htm>>

<sup>6</sup> Census in Brief, 'Working Seniors in Canada,' <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016027/98-200-x2016027-eng.cfm>>

<sup>7</sup> OBSI, *supra* at page 8



Seniors in Canada are also drawing income from precarious, potentially volatile sources including a combination of government benefits; private pensions; savings, and other assets; and continued employment income.<sup>8</sup>

Knowing all this, it makes sense that banks should be able to offer their primary customers peace of mind with a complaint handling provider that is not only fair and accessible, but also effective.

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## Guiding Principles

These guiding principles are necessary to help align industry with international best practices. While we applaud them, CanAge is also mindful of the experiences of older Canadians as they bank. We look to guidance in the Canadian Banking Association's *Voluntary Banking Code for Seniors*<sup>9</sup> and hope that this may start a conversation with the Minister about how to create a dispute resolution system that is also inclusive for older Canadians.

We know that Banks lack procedures for escalating complaints. The OBSI found that, "most banks have neither deployed nor implemented procedures to provide additional assistance to consumers who may have more difficulty escalating their complaint or navigating the bank's CHPs, such as seniors, people with disabilities, consumers in rural areas or those in low-income households." Clearly define these guiding principles and hold ECB's accountable to using them as framework to implement best practices.

In a recent publication, *Seniors Strategy*, the OSC proposed a strategy that is inclusive, social and responsive (three guiding principles). We recommend including inclusivity as a guiding principle to ensure that the interests of all consumers are equally represented.

This can help provide much needed information to consumers about complaint handling procedures.

## Question #1

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

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<sup>8</sup> Ontario Securities Commission, Staff Notice 11-779, 'Seniors Strategy', <[https://www.osc.ca/sites/default/files/pdfs/irps/sn\\_20180320\\_11-779\\_seniors-strategy.pdf](https://www.osc.ca/sites/default/files/pdfs/irps/sn_20180320_11-779_seniors-strategy.pdf)> ["OSC"].

<sup>9</sup> Canadian Bankers Association, *Voluntary Commitments and Codes of Conduct Code of Conduct for the Delivery of Banking Services to Seniors*, <<https://cba.ca/Assets/CBA/Documents/Files/Article%20Category/PDF/vol-seniors-en.pdf>>



**Yes, but also consider:**

- Inclusivity: ensuring that an intersectional lens is used to provide equal access for all consumers.
- Accommodation: seniors may require a Trusted Support Person, and persons with disabilities may have specific needs for communicating. Dispute resolution location should be accessible and in an area that is easy to travel to.

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**Structure of Canada's external complaint handling system**

The FCAC identified several broad issues concerning the structure of the external complaint handling system in Canada. The most significant findings surrounded the existence of multiple ECBs. Specifically, the FCAC noted that the multiple-ECB model is not consistent with international standards and best practices. In fact, the World Bank also noted that the multiple ECB model where banks choose an ECB is in fact, unusual.

The ADRBO is already very far behind in adherence to international standards and best practices, especially where it concerns accessibility<sup>10</sup>, accountability<sup>11</sup>, and the perception of impartiality and independence.<sup>12</sup> There are substantial questions about the effectiveness of this for-profit ECB and its terms and conditions agreement.<sup>13</sup> CanAge rejects the quality and appropriateness of ADRBO as an entity in the field of dispute resolution for the financial industry and notes with deep concern that this "divided system" is harmful to consumers, particularly vulnerable consumers.

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<sup>10</sup> FCAC, 'The Operations of External Complaints Bodies: Industry Review' (2020), <<https://www.canada.ca/en/financial-consumer-agency/programs/research/operations-external-complaints-bodies.html>>, at page 3 where the authors provide that ADRBO's initial view process and its procedures for accepting complaints banks have been unable to resolve within 90 days are not consistent with the Agency's expectations for accessibility. ["FCAC: ECB"].

<sup>11</sup> FCAC: ECB, *supra* at page 4 where the authors found that "ADRBO is not meeting the Agency's expectations for reporting complaints lodged against it by consumers."

<sup>12</sup> *Ibid*, where the authors held that, "ADRBO's procedures for ensuring that it conducts investigations in an impartial and independent manner are neither adequately detailed or sufficiently comprehensive."

<sup>13</sup> *Ibid*, at page 5 where the authors noted that, "ADRBO is not meeting expectations for effectiveness. More specifically, FCAC has concerns regarding its initial view process, training program and procedures for investigations and recommendations; also at page 12 where the authors concluded that, "ADRBO's T&C agreement contains legal jargon, is principally about its own rights and responsibilities, and contains statements that omit some of its obligations." Finding that ADRBO instructs consumers to seek legal advice if they do not understand any aspect of the agreement (contrary to the FCAC's expectation that ECBs will provide information to consumers in plain and simple language).



We are, however, encouraged in knowing that strengthening the OBSI and providing a robust framework is an area of focus for industry stakeholders including the Ontario Securities Commission (“OSC”) and the Canadian Securities Administrators (“CSA”) and others.

The guiding principles do not, however, explicitly discuss the specific needs of seniors. With that in mind, we note that the OBSI already meets and exceeds the requirements for accessibility by adopting international best practices for external dispute services. What’s more, the OBSI has a Code of Conduct in place that provides a detailed and comprehensive framework, albeit with room for improvement. By contrast ADRBO has none of these protections or supports in place.

## **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?*

### **Implement a common-ECB model under the OBSI**

- Systemic mandate: the OBSI should be the common-ECB and will have the binding decision-making authority over individual cases.
- Individual case handling: ability to provide impartial and independent complaint handling and dispute resolution.
- Increase remit limit from 350k to 500k.

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### **Profit structure of an external complaints body (ECB)**

While we note that the FCAC did not explicitly find evidence that a for-profit funding model resulted in more favourable treatment of the banks, this has been the experience of CanAge. The reviews of the experience of levels of dismissal as not meeting the threshold for review or being “out of scope” has neared sharp practice to the profound detriment of consumers.

CanAge strongly supports a common-ECB model which also vests the OBSI with binding decision-making authority.

Older Canadians, much like anyone else, expect impartiality and independence when seeking the resolution of disputes. Research tells us that the majority of complaints from seniors at the OBSI come from working class consumers. In the OBSI’s 2019 Senior’s report, it was noted that



54% of senior complainants reported their household incomes below \$60,000 while more than 30% of complainants over 60 report household incomes below \$40,000.<sup>14</sup>

The consumers that are utilizing ECBs are extremely mindful of their personal time and costs. Older consumers do not have the luxury of time flexibility or financial resources to resolve disputes with the bank and require a system that is not only impartial and independent but also appears to be so.

### **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?*

### **Answer**

Having a for-profit structure has profound real and perceived negative impacts.

First, consumers expect impartiality. That is the basis of an Ombuds service. If financial institutions are seen as buying their own judge, this fundamentally destroys any notion of impartiality.

Second, consumers have already had to escalate up through the complex and one-sided system of the financial institution. Having received no resolution they previously were sent to the financial institutions' "Ombudsman". The system has rejected that they are any kind of Ombuds-service, because of course they are paid by the financial institution and are part of that structure, and thus financial institutions were forced to change their own naming of this to be clear to consumers that this was not independent. At this point, still without resolution, they are then sent to a for-profit, paid-by-the-bank private ECB. How can any sense of independence, transparency or fairness be even imagined by this structural problem alone? This sense of "wrongness" and injustice is exacerbated when learning that had they banked at a different financial institution they would have the support of OBSI - a truly independent actual Ombuds service.

Canadian consumers pay the price in lost confidence, and have turned even further in perception against financial systems.

The perception and natural justice problem is fundamental, and well established in report after report. The international standard of a single independent financial ombuds-service is also underscored continually. None of these issues are new - and there are no supporters of a for-

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<sup>14</sup> OBSI, *supra* at page 7



profit system who are not themselves part of that for-profit system. This is the very definition of skewed and perceptively self-serving.

What has changed is this: Since COVID19, consumers in Canada are ever more fragile, and losses are felt ever more deeply. Confidence in structures like financial institutions and government are fading and worn. OBSI has more cases than it ever has - including during the 2008-9 crisis. ARDBO presumably has the same issue - although its consistent lack of disclosure makes this nearly impossible to know. It statistically should have more new cases than OBSI given its "clients" percentage of the financial industry banking sector.

This issue is tired. Advocates are tired. Consumers are tired. I think it is highly likely that the financial sector is tired and wishes for clarity.

The needs are extremely well-defined, well-understood and agreed upon. Lack of action and perpetuating this fundamentally unfair model is now normatively different in these difficult times.

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### **Funding model of an ECB**

It is unclear how an assessment formula impacts bank customers. This is an area of immediate research that should be conducted by an impartial and independent third-party.

### **Question #4**

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

### **Answer**

- Transparency is key, and early resolution processes plus supportive help to the banking sector is important here.
- There is a total lack of transparency around ADRBO's processes and assessment formula
- Fundamentally however, the lack of real and perceived impartiality ends at first principles: is there a common actually independent Ombuds service or not? If not, then you have a problem prima facie, and the assessment formula really matter much less.

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### **Scope of ECB function**





We respectfully submit that a common ECB for both the banking and investment industry will create a more efficient and confidence-building process while providing consumers and financial services providers with increased effectiveness. There is much to be said about expert knowledge and the common-ECB model for banking and investments would adhere to OSC recommendations to designate a dispute resolution services organization with the power to issue binding decisions.

### **Question #5**

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

### **Answer**

Yes. We've seen this work very effectively in the UK and the Australian models. However this imagines expanding the scope of dispute resolution to other financial services, not putting *all* disputes into a common pot. CanAge believes that there are a variety of currently unregulated areas of financial services which would be more effectively placed under OBSI's mandate - including insurance.

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### **Complainant assistance**

The cost of legal services is out of reach for most Canadian households. Even obtaining simple legal advice may come with a significant cost. With that being said, consumers of financial service providers need specific assistance without having to resort to the cost of a lawyer.

The stark reality, illustrated by the FCAC, is that, "most banks reported upward trends in the volume of consumers escalating complaints, the number of investigations opened and the complexity of the complaints escalated."<sup>15</sup> With this fact in mind, we know that a robust complainant assistance regime is long overdue.

In the FCAC's (2020) Bank Complaint Handling Procedures Industry Review, the FCAC found that of the consumers they surveyed, 76% had their complaint resolved at their bank's first level - 77% of these consumers were satisfied with the resolution.<sup>16</sup> Internally, banks are doing a

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<sup>15</sup> FCAC: ECB, *supra* at page 11

<sup>16</sup> FCAC, Bank Complaint Handling Procedures Industry Review (2020), <<https://www.canada.ca/en/financial-consumer-agency/programs/research/banks-complaints-handling-procedures.html>>, page 7 ["FCAC: CHP"].



decent job of resolving disputes through front-line employees. Things start to change dramatically, however, when disputes become complex and require more attention.

The FCAC report found that the effectiveness of complaint resolution declines when complaints escalate past the first level. Banks are only able to resolve 43% of complaints at the 2nd level and 34% at the 3rd level (the SCO office). Consumer satisfaction levels also plummet when complaints are escalated; only 52% of consumers were satisfied with their resolution at level 2 while only 42% were satisfied with their resolution at the third level. Banks are not understanding the nature of complaints and why they are achieving such a low resolution rate. The FCAC review, “revealed that only one bank uses a survey designed to provide insights into consumers’ experiences with complaint handling, randomly sampling consumers who have recently escalated a complaint to its second level. None of the banks have formal processes to gather feedback from consumers who have brought complaints to the SCO.”<sup>17</sup>

The FCAC review was also instrumental in illuminating the fact that banks are not adequately providing information to consumers about complaint handling procedures. The FCAC found that only 30% of consumers surveyed reported being given additional information from the bank about how they could resolve or escalate their complaint. What’s more, FCAC guidelines require banks to inform consumers about their right to escalate a complaint to an ECB if it takes more than 90 days to resolve from the time it was escalated to level two. Unfortunately, the FCAC review found that not only do banks generally fail to clearly communicate this right but also lack reliable procedures to provide consumers with 90-day letters, particularly at level two.<sup>18</sup>

The situation described above necessitates a complainant assistance program that at the very least, fills in the gaps by educating consumers on their basic rights, average time to hear and resolve a complaint, and helpful tips and best practices to stay safe. This program must be accessible and accommodate the various needs of consumers at all stages of life.

#### **Question #6**

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

Yes. Complaint assistance is critical to an ECB service.

#### **Provide complainant assistance through the OBSI**

There is a great need to provide complainant assistance. Banks may be misleading consumers about the process. An impartial and independent ECB can provide consumers with information

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<sup>17</sup> FCAC: CHP, *supra* at page 10

<sup>18</sup> *Ibid*, page 20 where the FCAC noted that, “some banks have misleading letter templates that suggest consumers must wait until the SCO completes its investigation before they can escalate a complaint to the ECB.”



about the complaints process. We look to examples from the United States and the existing complaint information regime in the province of Quebec for evidence of the feasibility of providing such assistance to consumers.

- **FINRA - Securities Helpline for Seniors**

The Financial Industry Regulatory Authority (FINRA) Inc. is a self-regulating organization that regulates brokerage firms and exchange markets in the United States of America. FINRA is a not-for-profit entity. The first level of appeal of FINRA decisions is the Securities Exchange Commission.<sup>19</sup>

FINRA operates the Securities Helpline for Seniors. The helpline receives four types of calls (generally). These calls can be classified mainly as:

1. Questions regarding basic investment concepts or research.
2. Calls from beneficiaries having trouble locating assets.
3. Concerns regarding excessive or suitable trading.
4. Allegations of potential fraud.

Since the inception of the hotline, \$5.3 million has been voluntarily returned to brokerage consumers because of information provided by the Hotline.

The Helpline through the end of March 2018 is represented by:

- Callers from all 50 states ranging from age 17 to 102
- Average age of 70
- 166 matter referred to Adult Protective Services
- 1,017 matters referred to state, federal, and foreign regulators<sup>20</sup>

- **Québec's Autorité des marchés financiers (AMF)**

In June 2017, the Québec government launched a 5-year action plan aimed at promoting awareness and understanding of the mistreatment of older adults. The plan included a 52 measure plan and is based on recommendations learned when the AMF hosted community and industry focus groups.<sup>21</sup>

### What would a Complainant assistance program look like?

The foundation of the complainant assistance program should be a platform for legal education. Consumers need properly marketed tools and supports which they can easily access in a variety of formats to learn their rights and responsibilities. This should include a Helpline that consumers can access and an easy to use toolkit for their own complaints system management.

<sup>19</sup> BCLI, Report on Vulnerable Investors <https://www.bcli.org/wordpress/wp-content/uploads/2017/11/171115-Vulnerable-Investor-Paper-FINAL.pdf>

<sup>20</sup> FINRA, Senior Helpline, <<https://www.finra.org/investors/insights/finras-senior-helpline>>

<sup>21</sup> OSC, *supra* at page 31



We urge the Minister to also consider linking this service with the newly promised federal Helpline for Seniors, given the overwhelming prevalence of fraud and financial crimes perpetrated against seniors. We also urge increased data collection including disseminated data in order to better understand both the types of complaints and complainants - and who is being missed- to ensure continuous improvement of complaint assistance.

Without question, an ECB needs to remain impartial and independent (and be seen as so). It must be wary of providing specific advice to complainants on the merits of their complaint. With that being said, the complainant assistance program should provide a discretionary referral system so consumers can receive the impartial and independent advice of a third-party lawyer, similar to the Law Society of Ontario's Lawyer Referral program.<sup>22</sup> Further, this should be linked to programs and services across the country who can provide more hands-on support and assistance. Expansion of coverage for law clinics and supports can and should follow on to meet these needs.

All financial institutions should be required by law to clearly provide information about the complainant assistance program to any consumer that has a dispute escalated to level two. A "No Wrong Door" system as implemented in FCNB, the Maine Securities Commission and in the NASAA Vulnerable Consumers Taskforce should be implemented in the ECB Canadian context<sup>23</sup>.

Consumers are at a relative disadvantage when it comes to a complaint against a financial institution; they cannot afford the cost of a thorough legal opinion, legal advice, or representation while banks either have counsel on staff or are retained to answer any question that arises.

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## ECB recommendations

Under Canada's current system, ECBs issue non-binding recommendations. If a bank is non-compliant, the ECBs use a 'name and shame' policy where it would publicly publish its result, naming the offender firm. It has been suggested that the implementation of binding

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<sup>22</sup> The Law Society of Ontario, Lawyer Referral program, <<https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service> >, potential clients are entitled to a free thirty minute consultation with a lawyer in the area of law of their dispute (with the exception of Criminal and Family law matters). This is run through an online system.

<sup>23</sup> For more about the "No Wrong Door Approach" [https://www.maine.gov/dhhs/sites/maine.gov\\_dhhs/files/inline-files/STATEPLANONAGING2016-2020FINALDRAFT.pdf](https://www.maine.gov/dhhs/sites/maine.gov_dhhs/files/inline-files/STATEPLANONAGING2016-2020FINALDRAFT.pdf) See also information on the Serve our Seniors page by NASAA at: <https://serveourseniors.org/>



recommendations may require a more formal adjudication process with appeal rights, which could add a level of complexity to the complaint handling system.

In January 2021, the Capital Markets Modernization Task Force recommended allowing the Ontario Securities Commission (OSC) to designate a dispute resolution services organization that would have the power to issue binding decisions. The OSC and the CSA have both signalled their willingness to strengthen the OBSI, increasing its responsibility and mandate.

In April 2015, Ontario's Minister of Finance appointed an independent expert committee to provide advice and recommendations to the Ontario government regarding whether financial advice should be regulated. In November 2016, the expert committee issued its final report: *Ontario's Expert Committee to Consider Financial Advisory and Financial Advisory and Financial Planning Policy Alternatives*. In this report, the committee raised concerns about the current framework for consumer redress for financial losses, ultimately concluding that consumers with a complaint have a "complex series of venues to navigate depending on the financial product in question."<sup>24</sup> The expert committee found that all of the ombud services fall short of delivering the "kind of redress to which consumers should have access."<sup>25</sup>

In particular, the expert committee cited the OBSI's lack of binding decision-making authority as a "major barrier to it effectively fulfilling its role as an ombudsman in the province's financial services sector." Ultimately, "The expert committee concluded that this inability to make binding decisions, coupled with the fragmented regime for redress overall, necessitated a consumer-friendly process for recovery of financial losses from financial service providers by consumers as a consequence of negligent planning, advice and sales."<sup>26</sup>

CanAge agrees that it is important that binding authority is desirable, indeed critical on a *structural level*. But *functionally* it is not the biggest concern: giving binding authority without getting rid of the "for profit" aspect of competitive ECB is CanAge's fundamental worry. Banks generally follow the recommendations of OBSI. The cost to reputation generally outweighs the concern. But having "competition" in the field fundamentally makes the system unfair to consumers and lowers the quality of both real and perceived value of a financial sector dispute resolution system. This structural fault - both well-established and agreed upon - is also the reason we have "low ball" offers, and similar negative tactics. If the banks who use OBSI can essentially threaten to leave the independent system and are trying to use the 2 ECB structure as leverage, then consumer confidence plummets and our financial system falls into public disrepute.

## Question #7

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<sup>24</sup> OSC, *supra* at page 35

<sup>25</sup> *Ibid*, page 36

<sup>26</sup> *Ibid*, page 36



*Do you have views on whether the decisions of an ECB should be binding or non-binding on banks?*

Yes. Binding.

### **Vest the OBSI with Binding Decision-Making Authority**

While it is reported that service providers almost always adhere to or follow OBSI and ADRBO decisions, moving forward this needs to be supported by the binding decision-making of a common ECB. Industry critics have signalled the need for a designated dispute resolution services organization with the power to issue binding decisions.

The OBSI needs to be vested with this binding decision-making authority.

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### **ECB governance structure**

The framework requires ECBs to demonstrate to the FCAC that they have a process for assessing suitability and integrity of directors, and they must also monitor and assess the suitability and integrity of directors, and they must also monitor and assess the board's commitment to and fulfillment of regulatory requirements, including the complaints process.

The governance process must be transparent and public. We submit that much like the *Voluntary Banking Code for Seniors*, the OBSI creates a Seniors Champion position to ensure that the interests of older Canadians are properly represented on the Board of Directors.

At Part 4.0 of the *Voluntary Commitments and Codes of Conduct Code of Conduct for the Delivery of Banking Services to Seniors*, the Canadian Bankers Association ("CBA") outlines that banks will designate a member of management to promote seniors' interests. According to the CBA, "The Seniors Champion will have sufficient statute, knowledge, and resources to execute their duties."<sup>27</sup>

### **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?*

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<sup>27</sup> CBA, *supra*.



Yes. There should be transparency on the Board of Directors, and clear representation of consumer interests - as has been recommended many times by the international reviews of the ECB system / OBSI.

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**CanAge is pleased to provide more information and consult or present its findings as may be helpful.**

**All of which is respectfully submitted.**

**Laura Tamblyn Watts, LLB**

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