

The Role of Financial Dispute Resolution Schemes in Enhancing Consumer Trust and Confidence

Perspective of Canada's Ombudsman for Banking Services and Investments
(OBSI)

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Agenda

- **Does Financial Dispute Resolution (FDR) Build Trust and Confidence?**
- **What FDR Does Well, and Does Not**
- **FDR Accessibility**
- **Complaint Issues in Canada**
- **Canada's OBSI**
 - **What we do and how we do it**
 - **Governance**
 - **Operating statistics**
 - **Challenges**



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Does FDR Build Trust and Confidence?

- **Yes, but only when part of a broader and effective legal and regulatory framework**
- **Bank and investment firm solvency and market stability are bigger issues/concerns in the public's mind**
- **Only an issue when a problem is encountered; then it matters a great deal**
- **FDR is no substitute for good consumer-facing market conduct regulation**



Does FDR Build Trust and Confidence?

- **FDR is also no substitute for good internal firm-level dispute resolution**
 - **Canada adopted a 2-tier system from the beginning in banking and investments (internal firm complaint handling, escalation to industry-level dispute resolution - OBSI)**
 - **Vast majority of complaints appear to be resolved at the firm level**
 - **Good internal complaint data is not obtained from the financial service providers (would be very useful for public policy development)**
 - **Prevent inappropriate use of the term "Ombudsman" for firms' internal FDR**



What FDR Does Well

- **Gives elected officials a credible, impartial place to refer consumer and investor complaints about their financial service provider**
- **An independent and impartial review provides “closure” even for complaints where we say “no” – usually ends the matter which benefits the participating firms**
- **Provides an accessible way to address complaints that would not otherwise be resolved through the courts due to factors such as cost, time, intimidation/fear of court process**



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FDR Accessibility

- **Make it free, informal, and non-legalistic; adopt a fairness standard; employ well-trained consumer-facing staff**
- **No impact on legal rights of the consumer or firm**
- **Stops the limitation period clock**
- **Language - OBSI conducts investigations in English and French; inquiries handled in over 170 languages – contracted service**
- **Audited processes to be senior-friendly; TTY access for the deaf; website readability for the blind**



FDR Accessibility

- **How to make the public aware of their ability to access FDR?**
- **Difficult to make FDR well-known, but very important to be able to find it when a problem arises**
- **Low unaided public awareness (<2%); CAD 1,000,000 per 1% increase**
- **Very reliant upon firm disclosure and referrals backed by rules**



Other Benefits to Society from FDR

- **Lower cost process for all parties (consumers/investors and financial services providers)**
- **Diverts many consumer/investor complaints away from the already overburdened court system – likely averts class actions**
- **Learnings from complaint cases provide valuable feedback that helps financial service providers to improve**



Other Benefits to Society from FDR

- **Individual complaints can identify systemic problems that firms and regulators may not be aware of**
- **Issues highlighted in complaints are valuable for public policy development by regulators and legislators**
- **Enables the state to deal effectively with regulatory priorities without mixing in compensation**
- **Allows a different standard to be applied for compensation (fairness)**



What FDR Does Not Do Well, Nor Should It

- **Ineffective tool against financial sector corruption**
- **Does not address concerns over the pricing of financial products and services**
- **Does not deal with concerns about access to credit**
- **Does not deal with regulatory breaches; different issues and different standards ("fairness" versus "legality")**
- **Punishment of individuals or firms**



Banking Complaint Issues in Canada

- **One-third of OBSI's banking complaints involve debit and credit card fraud (banking complaints up 100% 2008-2010)**
- **Mortgage pre-payment penalties**
- **Payment scams**
- **Collection activity**
- **Privacy and service issues**



Investment Complaint Issues in Canada

- **Two-thirds of OBSI's investment complaints involve unsuitable investments (investment complaints up 200% 2008-2010)**
- **Duty of care to provide suitable investment advice and recommendations**
- **"Know your client" requirements are the foundation**
- **Disconnect between client's situation, know your client process, and the investments recommended will likely lead to a conclusion of unsuitable investments and a recommendation for compensation**
- **How to value the losses has been a very large issue (opportunity costs, benchmark performance, risk rating of individual investments)**



Investment Complaint Issues (cont'd)

- **Outside business activities (“off-book” investments)**
- **Unauthorized transactions**
- **Account churning**
- **Transaction errors**
- **Account fee disputes (especially deferred service charges on mutual funds)**
- **Likely taking on the exempt-market complaints starting late 2013**



Who We Are at OBSI

- **An independent national dispute resolution service established as a not-for-profit corporation (an NGO)**
- **An alternative to the legal system for banking services and investment firms' customers with an unresolved complaint**
- **Started in 1996 covering major chartered banks; in 2002 became the Ombudsman for Banking Services and Investments when the mandate expanded to all members of the:**
 - **Investment fund companies (mutual funds)**
 - **Investment dealers (brokerages)**
 - **Mutual fund dealers**



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Who We Are at OBSI (cont'd)

- **Currently have over 600 participating firms in OBSI**
- **Banks, federally-regulated trust companies, investment dealers, mutual fund dealers, mutual fund companies, and scholarship plan dealers**
- **Some credit unions have joined, under consideration by others**
- **Accessible by toll-free phone and fax; bilingual investigation services (English and French), customer inquiries can be handled in over 170 languages**



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What We Do at OBSI

- **Informal, confidential and independent review of complaints not resolved to the satisfaction of consumer**
- **We look primarily at cases of direct financial loss as a result of error, misleading information or bad advice**
- **Review industry standards, firm policies, regulations, laws ... and decide what would be “fair under the circumstances”**
- **Goal is to make the client “whole” where maladministration is found to have occurred**



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What We Do at OBSI (cont'd)

- **We make recommendations to the firm; not binding on either party**
- **Clients do not forfeit their legal rights; may reject our findings and start legal proceedings**
- **“The Olive Branch” - Gives participating firms an impartial service to which they can refer their unresolved complaints**
- **“The Stick” - We will make public any participating firm’s refusal of a recommendation, has only happened once since OBSI’s creation in 1996 – That has recently changed, 4 in the last 5 weeks**



How We Work at OBSI

- **Member firms must:**
 - **Have an internal complaint-handling system**
 - **Inform their clients about their internal complaint handling system**
 - **Inform their clients about OBSI and refer after completion or after 90 days**
 - **Co-operate in OBSI investigations; and**
 - **Pay their share of OBSI's operating costs**



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How We Work at OBSI (cont'd)

- **Firm has the first responsibility to resolve a complaint**
- **OBSI is an informal service, not bound by judicial rules**
- **We are not a regulator; we do not fine or punish firms**
- **Usually investigate; sometimes mediate**
- **Objective is to determine "Fairness in the circumstances" and recommend compensation**



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Investigative Process at OBSI

- **Review escalated file for mandate and timeliness**
- **Assess file based on final response letter from firm and any other material provided by the client**
- **If an investigation is warranted, client and firm sign a letter agreement with provisions for privacy release, confidentiality, and no subsequent use**
- **Firm sends us their complete client/investigation file**



Investigative Process at OBSI (cont'd)

- **Investigations based on interviews and document review**
- **Compensation recommendations will take into account actual costs or losses, mitigation issues and accrued interest**
- **Some non-financial recommendations are also considered (e.g., corrections to negative credit bureau reports)**
- **Sometimes recommend limited compensation for inconvenience**
- **Discuss findings with both parties, and finish with a comprehensive report outlining OBSI's reasons**



Systemic Cases (Dealing with “Mass Cases”)

- **Controversial power introduced by senior regulators in 2008; in force starting 2010**
- **Strongly opposed by industry and some regulators who saw it as a matter of regulatory jurisdiction**
- **Conducted 10 “systemic investigations” in 2010-11, 3 resulted in recommendations; refused by firm – reported to regulator**
- **Voluntarily withdrawn by OBSI Board in June of 2012 under pressure from industry and regulators; reintroduced by federal government in recent regulations as a whistleblower requirement (no investigation)**



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Governance of OBSI

- **Independent Board of Directors**
- **Chair of the Board is a non-industry (community) Director**
- **Community Directors must not be associated with either industry or government for two years prior**
- **Community Directors are the majority of the Board (7 of 10) and a majority of them are required to approve OBSI's budget and control hiring and firing of Ombudsman**
- **Directors not involved in investigations, decisions or appeals**



Canada Has a Unique Legal and Regulatory Environment for Financial Services

Less developed legal framework for consumer protection in financial services:

- **No legal duty of care imposed on banks by Canadian law, different situation for investment issues**
- **Bankers not fiduciaries, no fiduciary duty for “pure” banking transactions**
- **Special duty may apply where financial advice is given, but not in normal “lending” or transactional situations**
- **So where can an Ombudsman look to determine what is fair under the circumstances?**



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Canada's Unique Environment for a Financial Sector Ombudsman

Canada's federal-provincial sharing of powers that apply to our work:

- Banking is federal; trust companies can be federal or provincial
- Credit unions are provincial, but that system is currently evolving
- Non-bank consumer credit is provincial
- Securities regulation (investment leverage loans) is provincial (for now)
- Consumer protection issues are predominantly provincial
- Criminal Code provision restricting interest rates to 60% is federal



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Current Challenges

Unstable Environment

- **Competition in banking dispute resolution and banks seeking cost and scope reductions**
- **Uneven regulator support across sectors and jurisdictions**
- **Under-resourced for complaint volumes post-global financial crisis**
- **Lack of regulatory clarity re expectations and systemic (mass) cases**
- **Need to expand mandate of investment sector dispute resolution coverage to smaller firms operating in more difficult areas**



Further Information

**Ombudsman for Banking Services
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