

Request for Proposals

Experienced Reviewer to Conduct an Independent Evaluation of the Banking Mandate of the Ombudsman for Banking Services and Investments

Release Date: June 25, 2021

Background

Canada's Ombudsman for Banking Services and Investments (OBSI) is a national, independent and not-for-profit organization that helps resolve and reduce disputes between consumers and financial services firms in both official languages. OBSI responds to consumer inquiries, conducts fair and accessible investigations of unresolved disputes, and shares its knowledge and expertise with stakeholders and the public. OBSI's services are free to consumers.

OBSI's Terms of Reference require OBSI to submit to knowledgeable, independent third-party evaluations of its operations conducted according to timelines set out by its regulators. Since 2014, the banking and investment mandates of OBSI have been overseen by separate regulators with distinct independent review requirements.

In Canada, financial institutions including domestic banks, foreign banks and foreign branches, as well as federal credit unions, are required by the Bank Act to provide their customers with the services of an External Complaints Body (ECB). ECBs are also regulated under the Bank Act. OBSI is one of two ECBs in Canada. Supervision of both financial institutions and ECBs is carried out by the Financial Consumer Agency of Canada (FCAC).

The evaluation that is the subject of this Request for Proposals will concern OBSI's operations in relation to its banking mandate only. The principal regulations under the Bank Act applicable to OBSI's operations are found in the *Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations* (Complaints Regulations), which provide, in part, that each ECB must submit every five years to an evaluation of the discharge of its functions and performance of its activities as an external complaints body that is conducted by a third party in accordance with the terms of reference established by the body corporate in consultation with the Commissioner of the FCAC. This requirement is presently found at section 7(p) of the Complaints Regulations and will be found at section 627.49(l) of the Bank Act following the coming into force of that section.

Previous independent reviews of OBSI were conducted in 2007 and 2011 in relation to both banking and investments mandates and in 2016 in relation to OBSI's securities mandate. These reviews are published on OBSI's website.

OBSI will cooperate with the evaluator to facilitate the completion of the evaluator's report within a reasonable time from the commencement of the evaluation. OBSI will provide the FCAC with an action plan respecting the proposed implementation of any recommendations made in the independent evaluator's report.

The scope and details of the independent review described in this Request for Proposals reflect the decision of OBSI's Board of Directors made in consultation with the FCAC.

This independent review will be conducted simultaneously or concurrently with an independent review of OBSI's securities mandate and an independent review of the banking mandate of the other Canadian ECB, ADR Chambers Banking Ombuds Office (ADRBO). It is a requirement of FCAC that the same independent evaluator conduct both ECB reviews, and it is OBSI's preference that this reviewer will also conduct OBSI's securities review. Each of these three reviews is the subject of a separate Request for Proposals.

- The Request for proposals for our securities mandate review can be accessed here: <https://www.obsi.ca/en/about-us/independent-evaluations.aspx>
- ADRBO's Request for Proposals can be accessed here: https://bankingombuds.ca/?page_id=2013

Purpose

OBSI is requesting proposals from qualified candidates to provide an independent third-party evaluation (Evaluation), to be selected through an open and competitive process. The successful candidate will be designated the independent evaluator (Evaluator) for the purposes of the Evaluation. The Evaluator's responsibilities will include information collection, analysis and reporting. OBSI Staff will assist the Evaluator in identifying and accessing information.

The Board of Directors of OBSI is the primary stakeholder of this project and the FCAC, as OBSI's regulator for its banking mandate, will supervise OBSI's compliance with applicable laws and regulations including the requirement to conduct a five-year review. The purpose of the Evaluation is to ensure that OBSI continues to meet the standards and expectations set out in the Bank Act and associated regulations and that it operates in a manner that is reflective of recognized best practices for financial services ombudsmen.

The Evaluator will submit a report to OBSI as outlined in the attached Independent Evaluation Terms of Reference, which have been established in consultation with the FCAC. The final report will include the Evaluator's findings, review methodology, and recommendations for improvement, if any. OBSI will provide the FCAC with a copy of the final report and make it available to the public on its website.

Proposal Elements

All submitted proposals must contain, at a minimum, the following components:

A. Suitability and Technical Skills

The candidate must demonstrate that he, she or they possess the necessary skills, expertise, and experience to perform the work described herein and must demonstrate that he, she or they have sufficient resources and staff to complete the project in the timeframe set out in the Terms of Reference. The candidate, as part of the project, is expected to analyze complex information and arrive

at valid, concise conclusions. Candidates should describe in some detail their past projects, consultancies, publications, reports, or other relevant information to demonstrate their suitability for this project.

The candidate should outline the extent of his, her or their knowledge with respect to dispute resolution in the context of an “Ombudsman scheme” or equivalent with a fairness mandate, comparable financial ombudsman schemes in other international jurisdictions, the Canadian banking regulatory landscape, and the Canadian financial sector.

B. Declarations of Conflicts

Any conflicts of interest, whether real or that have the potential to be perceived as such, must be declared in the proposal. This includes potential conflicts such as where a firm has other individuals working on other banking sector work, even if the respondent to this RFP is not involved.

C. Work Approach and Professionalism

The candidate must, in general terms, describe how he, she or they intend to conduct the Evaluation including identifying key milestone dates, resources, meetings, and deliverables. Additionally, the candidate must describe how he, she or they propose to measure and evaluate each of the standards set out in the Complaints Regulations as required by the Terms of Reference below.

Given the current circumstances of the global pandemic, it is expected that the Evaluation will be conducted entirely through the use of remote technologies. OBSI will provide the Evaluator with suitably secure digital access to all relevant documentation and personnel.

The candidate must express a commitment to being unbiased and neutral throughout the Evaluation process and undertake not express any opinion or take any action (or inaction) that would cause any reasonable stakeholder to question its fairness or independence. In addition, the Evaluator must undertake to maintain the utmost professionalism in all situations.

D. Curriculum Vitae

The candidate must include a curriculum vitae for each member of the team that will work on the project and demonstrate that the team, as a whole, has the necessary skills, expertise, and experience to complete the project.

E. Confidentiality

The candidate must provide a statement agreeing to operate under a non-disclosure agreement.

F. References

The candidate must provide at least three (3) references. One or more references may be contacted.

G. Interview Availability

The candidate must provide at least three (3) 2-hour time periods when they will make themselves available for a videoconference interview on weekdays between August 2, 2021 and August 13, 2021, between the hours of 9:00am and 5:00pm Eastern Standard Time.

H. Costs

The proposal must contain an estimate of costs. The budget for this project will be less than \$80,000 CAD, exclusive of travel costs, if any. A separate estimate of travel-related costs must be included with the proposal, if applicable.

The candidate should provide as much information as possible in the proposal. If possible, costs should be itemized with an appropriate description or explanation, as necessary. Assumptions may be included if appropriate. A fixed-cost quotation is strongly preferred.

Selection Process

A team consisting of OBSI Senior Management members will first review submitted proposals and may schedule interviews with candidates during one of the available times outlined in each proposal.

Candidates will be evaluated based on a number of criteria, including:

- suitability
- technical expertise
- understanding of the applicable regulatory structures
- understanding of financial services ombudsman (or equivalent) schemes
- reputation
- proposal presentation
- the ability and capacity to publish a clear, independent, and public report on their findings
- the ability and capacity to conduct a separate and independent five-year review of the other Canadian ECB concurrently or sequentially with the Evaluation
- the ability and capacity to conduct a separate and independent five-year review of OBSI's securities mandate concurrently or sequentially with the Evaluation
- value-for-money

Consultation with the other Canadian ECB and FCAC will also take place. All submissions along with the evaluations and recommendations of Senior Management will be provided to OBSI's Board of Directors for a final decision.

Submission Requirements and Deadlines

Interested candidates must direct any questions to Sarah P. Bradley, Ombudsman & Chief Executive Officer, by email to governance@obsi.ca before July 9, 2021 at 5:00 pm Eastern Standard Time. Answers will be provided to all candidates and answers to all questions received will be posted on OBSI's website by July 16, 2021.

Interested candidates must submit proposals by email to governance@obsi.ca. An email confirmation will be provided. Proposals will be accepted until July 30, 2021 at 5:00pm Eastern Standard Time. All proposals must be submitted as a single PDF file.

Candidates will be notified whether their proposal is selected by September 24, 2021.

Contract terms and conditions will be negotiated upon selection of the successful candidate. All contracts are subject to review by OBSI legal counsel.

OBSI reserves the right to amend this RFP and attached Terms of Reference at any time prior to July 16, 2021. OBSI reserves the right to reject any and all parts of the RFP at its discretion. A final version of this RFP, highlighting any changes, will be posted on OBSI's website by July 16, 2021.

A summary of these timelines is provided in the chart below:

Item	Date
RFP Distributed	June 25
Questions submitted by	July 9
Responses to questions provided and posted by	July 16
Changes to RFP possible until and posted by	July 16
Proposals received by	July 30
Interview period	August 2-13
Selection communicated to candidates by	September 24
Final presentation of finished report	December

All timelines are subject to revision as necessary and agreed between the Evaluator, OBSI and FCAC.

Attachments to this Document

- Independent Evaluation Terms of Reference established in consultation with the FCAC

Additional Relevant Materials

- Complaints Regulations – can be found here: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-48/FullText.html>
- Commissioners Guidance CG-13: <https://www.canada.ca/en/financial-consumer-agency/services/industry/commissioner-guidance/guidance-13.html>
- OBSI Terms of Reference – can be found here: https://www.obsi.ca/en/about-us/resources/Documents/EN_OBSI_ToR_-December_6_2018.pdf

Independent Evaluation Terms of Reference

The Evaluator will report on:

- A. Whether OBSI is fulfilling its obligations as outlined in the Complaints Regulations and CG-13; and,
- B. Whether any operational, budget and/or procedural changes in OBSI would be desirable in order to improve OBSI's effectiveness in fulfilling the provisions of the Complaints Regulations and/or recognized best practices for financial services ombudsmen.

The Evaluator will evaluate OBSI's operations and procedures applicable to the handling of banking complaints involving participating firms who are federally regulated financial institutions, including the effectiveness of complaint resolution.

The Evaluator will consider and evaluate:

- banking complaint case files completed between November 1, 2018 and October 31, 2020 (the "Review Period")
- current operating policies and procedures, including any changes made during the Review Period
- third party evaluations, financial audits and internal self-assessments between August 2015 and August 2020

The Evaluator will ensure that the complaint files included in their review sample are selected at random and include files with the following outcomes: out of mandate before investigation, out of mandate following investigation, compensation recommended and no compensation recommended.

In addition to examining case files, the Evaluator will undertake interviews with key stakeholders including participating firms, complainants, consumer/investor groups, FCAC and OBSI staff. Interviews may be conducted personally, in writing, by telephone, or by electronic means and may include the use of surveys.

The Evaluator will be given full access to information, meetings, communications, and OBSI staff for the purposes of the Evaluation. OBSI will use its best efforts to facilitate and coordinate access to former staff members and other stakeholders. Access to any materials or staff must pertain to the Review Period.

A. Obligations under the Complaints Regulations

With respect to requirement (A) set out above, the Evaluator's report must include analyses and conclusions on OBSI's performance with respect to the requirements of CG-13 and the following requirements for External Complaints Bodies set out in the Complaints Regulations:

- a) Maintain a reputation for being operated in a manner that is consistent with the standards of good character and integrity.

- b) Make its services as an external complaints body available across Canada in both official languages and offer those services free of charge to persons who make complaints to it.
- c) Ensure that every person who acts on its behalf in connection with a complaint is impartial and independent of the parties to the complaint
- d) Accept as a member any bank or authorized foreign bank that makes a request to it for membership
- e) If a person has made a complaint to it in respect of a bank or an authorized foreign bank that is a member of another external complaints body, provide the person with the name of that other body and its contact information without delay
- f) If it determines that all or part of a complaint is outside its terms of reference, provide the person who made the complaint with written reasons for that determination within 30 days after the day on which it receives the complaint
- g) Transfer a complaint received by it and all related information that is in its possession or control to another external complaints body without delay if a bank or an authorized foreign bank that is a party to the complaint becomes a member of that other body before a final recommendation is made in respect of the complaint
- h) Advise the parties to a complaint that is transferred to it by another external complaints body in writing and without delay
 - i. That a bank or an authorized foreign bank that is a party to the complaint has become a member of the body corporate, and
 - ii. that the complaint has been transferred to it
- i) Advise the Commissioner in writing and without delay if it determines that a complaint raises a systemic issue
- j) Inform the parties to a complaint about its terms of reference and procedures for dealing with complaints and, on request, provide them with any further information and assistance necessary to enable them to understand the requirements of those terms of reference and procedures
- k) Deal with complaints in a manner that affects only the parties to them
- l) Make a final written recommendation to the parties no later than 120 days after the day on which the information that it requires to deal with the complaint, as set out in its terms of reference and procedures, is complete
- m) Consult at least once a year with its members, and with persons who have made complaints to it since the previous consultation, with respect to the discharge of its functions and performance of its activities as an external complaints body
- n) Submit an annual report to the Commissioner on the discharge of its functions and performance of its activities as an external complaints body, which includes
 - i. a summary of the results of any consultation with its members and with persons who have made complaints to it,
 - ii. in respect of each of its members, the number of complaints that it received, the number of complaints that it determined were within its terms of reference, the

- number of final recommendations that it made and the number of complaints that, in its opinion, were resolved to the satisfaction of the persons who made them, and
- iii. the average length of time taken to deal with complaints;
- o) Make the annual report available to the public without delay after it is submitted to the Commissioner
 - p) make information available to the public about
 - i. its constitution and governance and the identity of its members,
 - ii. the terms of reference that govern its functions and activities as an external complaints body
 - iii. all sources of funding for its functions and activities as an external complaints body, including the fees charged to each of its members for its services and the method of calculating those fees, and
 - iv. the results of the most recent five-year evaluation.

B. Operational Effectiveness

With respect to requirement (B) set out above, the Evaluator's report must set out analyses and conclusions including:

- a) A report on progress towards the recommendations from the previous independent reviews.
- b) A high-level evaluation of OBSI's operations with reference to its terms of reference, internal policies and procedures, and fairness statement.
- c) A high-level benchmarking exercise that compares OBSI to other financial services ombudsman schemes or equivalent in comparable international jurisdictions both operationally and with respect to OBSI's general organizational approaches to matters such as accessibility and transparency.
- d) An analysis of OBSI governance, including particular reference to stakeholder representation on OBSI's board of directors.

Deliverable(s)

The Evaluator will present a final report in English to OBSI and the FCAC and make separate presentations to OBSI Senior Management, OBSI's Board of Directors, and a joint meeting of the OBSI Board of Directors and the FCAC.

OBSI will facilitate a professional translation of the final report into French. The final report will be published simultaneously with the final report of the five-year review of the other Canadian ECB.

Timeline

The Evaluator will regularly update OBSI on its progress and immediately disclose any material issues that could hinder its ability to carry out an effective independent evaluation and OBSI will advise the

FCAC of any such issues. A full project timeline will be presented by the Evaluator to OBSI for consideration and approval.

The final presentation to the OBSI Board of Directors and FCAC will take place in December 2021. Work on the review should begin in October, 2021.
