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Subject: Judith Andrew submission re OBSI banking review service
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To: pp@poonampuri.ca



Good Day Professor Puri,

I appreciate the opportunity to make submissions regarding OBSI as an interested individual.

The terms of reference for your review would suggest that those responding, or capable of responding to the questions, will be in the 'policy wonk' category. Accordingly, I rather suspect that you will receive submissions that are mostly from policy types representing organizations which are directly involved in the business/activity of 'bank ombudsman.' It will be much more difficult for you to get input from actual users of the system you are reviewing, especially ones that are able to offer policy recommendations for system improvement. Some users of OBSI may know something was amiss in terms of their case result, but not have the wherewithal to understand and explain what precisely went wrong at the review body level. In my own case, a recent direct experience with OBSI, together with an early stint in banking, followed by a long career in public policy (on behalf of business), also experience holding a key role in another administrative tribunal, gives me some unique insights into OBSI's functioning.

In this submission, I will address the two key review points set out: 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.

It is my considered view that, after 25 years in operation, OBSI is not fulfilling its main function as a review body that delivers fairness to ill-treated customers of banking institutions. At its inception 25 years ago, OBSI was set up amid howls of protest from individuals and small businesses concerning their treatment by large, powerful banks; I know this because I was working for the lead small business organization at the time. The government's intention a quarter of a century ago was to provide a bank review process that helped customers get justice in their bank dealings, this without incurring prohibitively expensive legal costs. In short, **OBSI was originally set up to bring some balance to customer-bank dealings, with the correct assumption that power and expertise reside with the 'big' bank and OBSI's function is to find fairness for the 'little' customer.**

Banks heavily lobbied the idea that they would have to submit to a review body, gaining many victories in the process. One was that they succeeded in getting a rule that a customer could only complain to OBSI if they had exhausted the bank's internal processes; I would hazard that internal bank ombudsmen got their start at about that same time, or perhaps somewhat prior to bolster the banks' argument that an independent review body was really unnecessary. Presumably it was later that they also got another beneficial-to-them rule to the effect that if a bank did something dastardly, something punitive in relation to a case that had been filed, why that would have to be considered a separate process to be followed through all of the complaint steps.

The main reason for OBSI's failure is that it is not fair and impartial, on account of its set-up and functioning serving 'member' banks as opposed to ill-treated customers of those banks. While OBSI claims to have fine reputational values, including independence and integrity, it is clear to me, at least, that OBSI member banks call the shots on everything, entirely unchallenged:

- First, the set-up features so-called ‘member’ banks, and more recently a competitive system which gives banks additional leverage in that they may choose to which of the review bodies they will affiliate and direct their substantial dues.
- Second, governance, i.e. the OBSI Board of Directors, with only one ‘consumer interest’ director, two big banks alternately holding the CBA seat, and the rest generally in the financial professional category, not specifically representative of particular stakeholder groups, which is a recipe for making a Board ineffectual. OBSI does not even provide the contact information for Board members, so feedback from outside is heavily discouraged.
- Third, the Financial Consumer Agency of Canada (FCAC) appears to be distant from what is going on, so distant that studies concerning OBSI performance and even your current review are, in fact, OBSI ‘do-it-yourself’ initiatives (I would guess for reasons related to whose budget pays). Regrettably, this means that OBSI surveys and studies are filtered by their own staff who understandably would have a vested interest in the status quo. The only saving grace with your review report, Professor Puri, is that it and submissions to you are to be published. **More generally I would argue that rather than OBSI asking opinions of users (through questionnaires, surveys, etc.), what is really needed is for an external, independent and knowledgeable reviewer to be contracted by the regulator to do a deep dive into decision quality (carefully selected sample) evaluating if the results actually measure up to a reasonable standard. Accordingly, FCAC needs to be close to such reviews, actually run them, not keep itself a few steps removed from the fray.**
- Fourth, lack of transparency is a problem in a number of respects. Unlike ADBRO, OBSI does not provide senior organization official direct contact information, nor do they publish names and career profiles of their ‘investigators’ (which title is misleading as these are the adjudicators). OBSI is clearly a landing pad for ex-bankers; the two investigators I encountered are ex-bankers, as are many of the OBSI senior personnel. Perhaps this is where OBSI's notion of ‘fairness to the bank’ — mentioned to me a couple of times--got its genesis; this notion signals a tilting of perspective that implies, nonsensically, that a big, powerful, wealthy bank and a small, not-so-well-off consumer are somehow on equal footing in a case brought by the latter about its ill-treatment by the former.
- Fifth, one thing is crystal clear: after 25 years in the bank ombudsman business, OBSI does not have a publicly available repository of decision-making guidance, comprised of fairness principles anchored in relevant jurisprudence. This complete absence of published guidance for decision-making at OBSI is contrary to the general trend by administrative tribunals to publish (e.g. EI Benefits Digest, Jurisprudence Index). I was told that case guidance material is internal, and frankly was given the distinct impression that little of it existed in their ‘informal’ system, which impression was reinforced by OBSI's inability to supply anything that would justify the perverse result in my case. The void in decision-making reference material and the notion of taking care to be fair to the bank, goes some distance to explaining why ‘investigators’ take certain other ‘partial to banks’ steps. My experience was that investigators’ (i.e. adjudicators’) curious, seemingly off-the-cuff lines of thinking, dredging of their own knowledge reservoirs, seem to be filling the void for their having no official case jurisprudence nor policy fairness guidance for reference in support of decision-making. The other thing that is filling the decision-making void is covered in my next point. Contrary to governing Regulations, they also did not provide their Terms of Reference—which I located myself after my impromptu first level hearing-- nor other requested explanatory info around fairness as referenced in the regulations either. **In your reviewer role, I would request and examine what they actually have in their decision-making arsenal as part of your official review. The same would be advised for ADBRO.**
- Sixth, undue influence of internal bank ombudsmen is evident in the behaviour of

investigators and in the behaviour of the bank involved, in my experience. Notwithstanding that investigators have in hand the bank ombudsman's written case decision, the investigator on my case — a lawyer with bank experience—advised that investigators are in close touch with the bank ombudsman frequently, daily I was told. The subject bank in my case behaved badly just as my case was in OBSI intake, clearly aware that their internal ombudsman calls the final shots, that the OBSI step is merely pro-forma. Their view that the OBSI step, that they vaunt in their brochure, is inconsequential, couldn't have been more evident; clearly, the bank only uses OBSI for cover, for its PR benefit before its regulators and customers.

Recommendations

For the banking side review, and in the **short term** (given projected case volume surge in the wake of the pandemic)...

1. As noted above, quickly commission a deep dive into OBSI decision quality, using the learnings from this exercise for the next point.
2. Review OBSI's repository of decision-making guidance, and if this is as inadequate as I believe it is, launch a process to quickly elaborate some reasonable rules (jurisprudence and other principles) for OBSI adjudicators to apply, drawing from the decision quality deep dive. Publish the decision-making guidance publicly for all to see. Also, in relation to decision quality, establish a decision format to which all concerned adhere.
3. Forbid direct contact between bank ombudsmen and 'investigators' i.e. adjudicators while a case is being reviewed. The bank's submissions are contained in its internal ombudsman final written decision.
4. Prohibit banks from taking eleventh hour punitive steps against the customer while a case is before OBSI, as this both undermines the review body and intimidates the customer.
5. Publish contact information for OBSI Board members and senior officials; publish biographies for 'investigator' staff.

For the long term ...

1. Start by signalling that the bank review model needs a complete overhaul, which refresh after 25 years will be accomplished over a period while still serving customers.
2. The best strategy is to start from scratch in the overhaul to make the system more responsive to ill-treated customers of banks (given that clearly the customer is not on par a the big bank in any dispute), rethinking all of the parameters, including the bank member concept (perhaps the customer should have choice of forums) funding model (with funds flowing on case volumes), board composition (only representatives of customers), accountability through the regulator, transparency, decision-making arsenal etc.
3. Signal intention to end up with one review body, with proper accountability and oversight by the regulator, as well. (I am guessing that this would probably require disbanding both existing bodies and reconstituting along fresh lines; I believe it would be folly to succumb to pressure to anoint OBSI as the choice, as from my vantage point ADBRO seems preferable in some respects, although I know nothing about its performance.)

Thank you for considering my submissions. I stand ready to respond to any questions you may have about them.

Best wishes,

Judith Andrew

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Appendix... 'nutshell' decision dives where the bank involved made a serious error, admitted the error and then profited handsomely from it, and OBSI could not see its way clear to recommending a fair decision for the customer.

. While officially banks can act on a OBSI settlement recommendation or not, they also apparently control what is that OBSI recommendation. In the case below, OBSI needed and evidently did not receive the bank's agreement for OBSI to deliver on its website pledge: "If we decide that a firm has acted **unfairly, made an error** or given you bad advice, and you **lost money as a result, we will recommend that the firm restore your financial position to where it should have been.**"

BMO made an error (breached their own authored cardholder agreement by granting someone else additional credit on my card without my express consent.) It wasn't just a small mistake; the express consent clause is one that a few years ago government insisted be included as a consumer protection measure. BMO's executive office admitted their error and apologized for it, saying they were taking steps (undoubtedly training their credit officers) to ensure such a thing didn't happen again (all in writing which your investigators had to hand). I lost money as a result, costly interest for another year because BMO didn't speak with me about credit matters on my card, denying me the knowledge of their actions vis a vis my card, this during a pandemic when I was holed up for safety elsewhere than my statement mailing address (and banks had assured the government they would be kindlier to customers during the pandemic.) They behaved unfairly, in that BMO profited from their serious error at my expense. Their standard of care and conduct should have been higher for me, a just retired senior, who had been a lucrative client of that bank for some 35 years, had always paid my bills in full, and when the vast account balance came to my attention, I paid all those charges including some over limit ones. However OBSI did not recommend restoring my financial position on the excess interest that would not have been incurred had BMO not erred, nor did OBSI offer a cogent explanation for why not.

When scouring OBSI's website case studies for insights on what they recommend when a bank makes a serious mistake, I found one that in OBSI shoes I would be embarrassed to publish... As you may know, seniors get a lot of lip service posing as concern for their financial well-being these days, and the sad story involved an older couple who had cashed in investments of \$120,000, arranging with the bank officer for the monies be deposited to their joint account. A serious error was made by the bank: the deposit went to a different joint account the husband had with someone else. The endorsement was clearly wrong, entirely the bank's admitted fault for misdirecting the deposit. Later the husband died and the wife tried to access her investment money, apparently discovering that the other joint account holder with her husband had withdrawn it. Your organization said the wife was only entitled to half, \$60,000, reasoning (without any actual evidence of this it appeared) that she must have benefited from the other half while her husband was alive and able to draw from his other joint account. In short, the bank involved was so determined to do as little as possible to correct its serious error of wrong endorsement, that it was willing to supersede the testamentary rules and deny the widow her investment money entirely. Even your investigator must have seen how egregious this would have been, and presumably negotiated with the bank ombudsman to arrive at 'sawing off' at returning to the widow half of the couple's hard-earned investments. Of course, the reason this decision with such an appalling result was posted to your website was that someone there actually thought it served as a fine example of your effectiveness for the customer, notwithstanding that it was the bank's error to correct, period, and 'being fair to the bank' in splitting the difference should not have been on the table at all. The bank involved (BMO? or CIBC?) apparently has no shame to do that to a senior, a new widow, to fail to correct their admitted mistake, especially given that it is doubtful that she would have the wherewithal, financial or otherwise, to object further.

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