

# MARCH 26, 2012 ISSUE

## OBSI UPDATE – MARCH 26, 2012

This note is one in a series of newsletters updating you on what's happening at the Ombudsman for Banking Services and Investments (OBSI).

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### 1) CARP SUPPORT FOR OBSI

The widely-respected and influential CARP has [added its voice](#) to those who have come out strongly in support of OBSI as the single, independent dispute-resolution service for Canadian consumers with banking complaints:

The independence of the dispute resolution process – both the appearance of and the actual independence – is important to the trust relationship and this can be compromised if banks are permitted to choose their own mediation process. Indeed, this will certainly matter to CARP members since 75% of people who complain to OBSI are 50 or older — 53% of those are seniors, who may find it more difficult to pursue and receive resolution and compensation when they are unhappy with their dealings with banks.

#### Canadians Deserve Robust Investor Protection and Redress for Complaints

CARP has called for comprehensive investor protection. But, with the demise of the NSR and with OBSI left precarious after the TD and RBC withdrawals, investors and Canadians may now be less protected and have less recourse for their complaints against banks.

CARP strongly endorses a national initiative to protect retail investors and bank clients from fraud and financial crimes. It's time provincial and federal government's act together to implement common regulations, oversight, enforcement and independent conflict resolution. In this uncertain economic climate, Canadians and their hard earned money deserve the proper protections.

As we outlined in our [2011 Annual Report](#), for many of the older Canadians who come to our office, the financial harm suffered when a bank or investment firm makes a mistake is magnified by having fewer years to make up the losses and fewer income or job opportunities. If compensation is warranted, OBSI may be a senior's only hope for fair compensation, as going to court may take too long and is often uneconomic given the amount of money involved.

CARP is not alone in supporting OBSI. Consumer and public interest groups are unanimous in the belief that OBSI should be the only organization mandated by the Department of Finance to provide banking dispute resolution.

CARP's statement follows similar support from groups such as the Canadian Federation of Independent Business (CFIB), [Canadian Foundation for the Advancement of Investor Rights \(FAIR\)](#), [Option consommateurs \(OC\)](#), Union des consommateurs, the [Public Interest Advocacy Centre \(PIAC\)](#), the [Investor Advisory Panel \(IAP\)](#) of the Ontario Securities Commission (OSC), the [Consumers Council of Canada \(CCC\)](#), OBSI's arms-length [Consumer and Investor Advisory Council](#), le Mouvement d'éducation et de défense des actionnaires (le MÉDAC), the [Canadian Community Reinvestment Coalition](#), the Small Investor Protection Association (SIPA), [Kenmar Associates](#), and others.

As these groups have pointed out, the dispute-resolution process that consumers access needs to be credible, independent, and impartial – not beholden to any one stakeholder group. Allowing banks to choose a dispute resolution provider gives all the power to the financial institution and none to the consumer. A service hired by the bank and that, consequently, has the bank as a client will know who it is they need to please in order to keep the business, and it's not the individual making the complaint.

It's not just Canadians saying this, either. Organizations such as the [World Bank](#) and the [Australia and New Zealand Ombudsman Association \(ANZOA\)](#) have come out strongly against so-called 'competition' among Ombudsmen. As the World Bank notes:

Such a choice presents severe risks to independence and impartiality – because financial businesses may favour the ombudsman they consider likely to give businesses the best deal. It overlooks the role of financial ombudsmen as an alternative to the courts and creates one-sided competition – because, unlike the financial businesses, the consumers are not given any choice of ombudsman.

The [G20](#) has also committed to developing mechanisms to ensure that consumers have recourse to an independent redress process to address complaints that are not efficiently resolved via the financial services providers.

RBC and TD have both left OBSI for banking, choosing to hire and pay for a private for-profit supplier whose job is to rule on their merits of their customer complaints and claims for compensation.

The Globe and Mail [recently reported](#) that:

The Department of Finance has yet to rule whether banks could be forced to use the ombudsman, or disregard the process and break out on their own.

Meanwhile, the Financial Post had this to say in a [recent front-page column](#):

Sources say the Canadian Securities Administrator (CSA), which represents 13 provincial and territorial watchdogs, and the self-regulating bodies for the brokerage and mutual-fund industries, will reject the multi-platform system widely anticipated to be advocated by the federal government that would allow federally-chartered banks to hire their own mediators to sort out disputes with aggrieved clients.

"We're not going with that multi-platform in securities so we're going to have an issue," said a senior regulator who asked not to be named. "It's a shame. There's no question that investors require something straightforward and predictable."

At a time when Canadians are being asked to take more responsibility for their financial affairs, including investments, a crucial avenue for consumers to seek compensation in the event of a problem caused by their bank or broker will become more complicated — and more expensive.

There is growing concern among consumer advocate groups and regulators that if banks are allowed to choose a mediator to resolve disputes with their clients, the independence of the decisions will be compromised.

The Post also remarked on the [support for OBSI from the banking industry](#):

"Banks are opting out because they can, and that is jeopardizing the model," says a financial industry participant. "We really need Jim Flaherty to close the barn door."

The industry is hoping the Finance minister will address the contentious issue in his upcoming federal budget later this month.

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## 2) TREATMENT OF RBC AND TD BANKING CUSTOMERS

As noted above, RBC and TD have withdrawn from OBSI for banking complaints, choosing to hire and pay for a private for-profit supplier whose job is to rule on their merits of their customer complaints and claims for compensation.

OBSI continues to receive a significant number of calls from customers of RBC and TD who say they are being turned away by the banks' chosen supplier in situations where we believe that these customers have a right to have their complaints investigated. Others say they are being discouraged from even making a complaint or that their complaints are not being responded to in a timely manner. All of this is making RBC and TD customers who already take issue with their treatment by their bank even more frustrated and upset.

We note that RBC and TD's supplier, unlike OBSI, only reports publicly on the time it takes to complete an investigation starting from the date a file is assigned to an investigator, not from the date a complaint is received. Any backlogs or delays in responding to a complaint would not show up in their timeliness statistics.

An example of a type of complaint we have repeatedly heard involves the calculation of fees, with the complaint being that the bank miscalculated the amount. RBC and TD customers have been coming to OBSI seeking help after the supplier immediately ruled their complaint out-of-mandate – help we are unable to provide.

While banks do indeed have the right to make their own business decisions involving the setting of fees, the complaints were not about the rates but rather allegations the bank miscalculated them and overcharged the customers. Consumers appear to have been denied a fair and independent investigation.

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## 3) DEVELOPMENTS FROM AROUND THE WORLD

Canada and OBSI do not exist in isolation. There is a powerful global trend towards establishing and strengthening financial ombudsmen now that the success of the model is becoming more widely known.

If RBC and TD are successful in 'locking in' their chosen private for-profit providers, Canada's international reputation will suffer as no other country has intentionally taken this approach.

Our recently-released [2011 Annual Report](#) outlined some important international developments including:

- widespread condemnation, [including from the World Bank](#), of the race to the bottom in consumer protection that results from enshrining so-called 'competition' among ombudsman offices.

- the establishment of financial ombudsmen in several new jurisdictions.
- reports of financial businesses taking more aggressive and entrenched positions, and adopting a legalistic approach.
- international adoption of an investment loss calculation very similar to OBSI's.

There have been additional developments in recent months that are of interest to OBSI stakeholders:

- Russia is [strengthening its new financial ombudsman](#) with legislation. Previously it was a voluntary scheme. Financial businesses have 30 days to respond to a customer complaint before it can be escalated to the Ombudsman.
- South Africa is looking at [consolidating its financial ombudsmen](#) (including banking, investments, insurance, and pension) into one statutory body.
- Taiwan's new financial ombudsman [began operations](#). Its rulings are binding and consumers can bring complaints to the ombudsman 30 days after first complaining to the firm.

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