

## April 23, 2009 ISSUE

### FROM THE OMBUDSMAN'S DESK

Across all sectors of our service, across all Canada, and indeed around the world, complaint volumes are up. Way up.

We have opened up more files in the last 10 weeks at OBSI than we did in all 52 weeks of 2006. Having come off of two years in a row of huge growth, we are without doubt headed for another record year.

We have started to see cases on the investment side reflecting the downturn in the markets, with suitability complaints continuing to lead the way and leverage (borrowing-to-invest) files re-emerging as a significant category of dispute. On the banking services side, complaints about prepayment penalties are growing as consumers look to refinance higher-rate mortgages and loans.

Regretfully, we have seen indications that some firms – no doubt hit by the recession – have cut staff and resources in their complaints and compliance areas. Not only is this leading to more frustrated customers, it adds to our workload. Instead of a proper response to the client, the firm has fired off a template letter dismissing the complaint, and has done none of the proper groundwork of responding to a client.

While we've made progress, complaint-handling in financial services has a long way to go. The rules that governments, regulators and dispute resolution services bring in are only one part of the system, and in some ways not the most important part. At the firm level, good complaint-handling requires commitment from the top, appropriate resources and a willingness to accept that not only do mistakes happen, but they need to be acknowledged and corrected.

Elsewhere in this newsletter, you'll find a proposed new statistics reporting format. We're pleased to share this with our stakeholder community as part of our efforts to be more transparent in our operations and demystify our work as a dispute resolution service. We believe the new format is a better reflection of how we – and the industry – are resolving complaints.

Finally, this will be my last e-newsletter as Ombudsman. I am moving on to become President of Seneca College, and an active search for my successor is getting under way soon. I have thoroughly enjoyed my time at OBSI, and am proud of the excellent team that will carry on our important work as an integral part of the consumer protection system in Canada.

Perhaps the highlight of my nearly four years was the findings of the 2007 independent review, which found OBSI to be professional and effective. This validation from an international expert, who found the Canadian environment a tough one for a non-statutory, recommendation-based dispute resolution service, confirmed that the innovations and improvements we have been making are making a difference.

David Agnew  
Ombudsman

### OBSI-AMF COMMUNIQUÉ

In an effort to provide Québec consumers with the best options available regarding dispute resolution services and simplify the related tasks performed by members of the industry, the

Ombudsman for Banking Services and Investment (OBSI) and the Autorité des marchés financiers (AMF) are pleased to announce that they have entered into a new co-operation approach.

In the past few months, discussions have taken place between OBSI and the AMF for the purpose of developing a dispute resolution approach that draws on their expertise and falls within their respective jurisdictions.

With the implementation of this co-operation, OBSI and the AMF will be able to avoid a duplication of duties related to the examination of complaints involving a Québec consumer or an entity overseen by the AMF who is an OBSI member. This collaboration will help strengthen the actions taken by the AMF and OBSI in dispute resolution matters as well as ensure greater consistency in this regard.

Co-operation will be achieved in particular through information exchanges between the two agencies, optimization of the complaint examination and resolution process, and transparency among all parties. The AMF, in its capacity as a regulator, and OBSI will be able to better fulfill their respective roles and avoid an additional burden on the industry.

To ensure that this approach is effective and serves the best interests of consumers, we will rely on the usual co-operation of industry members.

## PROPOSED NEW STATISTICAL REPORTING

The way that OBSI reports statistics has not changed in several years. With recent innovations in our case management procedures, and an increased interest in our numbers, we have been rethinking the way we report on our activities to the public and our stakeholders.

Some of the issues that either we have identified or have been raised by stakeholders:

- Confusing categories
- Not transparent enough
- Insufficient detail

We are finding that our categories of Early Resolutions and Investigations are less useful as their boundaries blur and processes evolve. We are facilitating more settlements instead of launching full investigations, and increasingly finding ways to reach mutual agreements to resolve disputes even in the middle of investigations.

Going forward, we think it is more relevant to report outcomes on the complaints we receive, rather than reporting by the kind of process the complaint follows. While there are limits to our data-gathering and management resources, we believe we can do a better job of reflecting our work through more comprehensive and clearer statistics based on the outcome of the complaints we received than using terms that the public (and many stakeholders) find confusing.

We also propose to publish more frequently. We will continue to report our numbers through the Annual Review and will provide in-year updates through our website and newsletter.

Here are key elements of our proposed new statistical reporting that would start with our 2009 Annual Review:

- We will report all complaints of whatever category as "Complaints Received"
- Complaints Received will be broken down into the following categories:
  - Complaint out of mandate
  - Complaint sent to participating firm

- Complaint withdrawn
- Complaint resolved
- Complaint rejected
- Complaint supported
- All other contacts will be reported as an inquiry or referral as follows:
  - Information provided
  - Referred to regulator
  - Referred to ombudservice
  - Other
  - We will report the number of complaints being reviewed at the time of reporting
  - The annual list published of complaints by firm will be done on the basis of Complaint Received, not only investigations

We will continue to report the type of product and issue complaints we receive, as well as geographic distribution. We do not collect demographic information such as income or age of complainant, and have no plans to start.

Below please find an example of the proposed new reporting categories using 2008 data.

We will continue to refine our approach, and would appreciate any comments or suggestions you have. Please send them to Noemi Lavoie at [nlavoie@obsi.ca](mailto:nlavoie@obsi.ca).

### Proposed new reporting using 2008 data

#### Activity in the period Nov 1, 2007 – October 31, 2008

	<u>Banking</u>	<u>Investments</u>	<u>Other</u>	<u>Total</u>
Complaints Received				
Out of mandate	787	35	513	<b>1335</b>
Sent to firm	2107	370	44	<b>2521</b>
Complaint withdrawn	5	11	0	<b>16</b>
Complaint resolved	30	61	6	<b>97</b>
Complaint rejected	274	203	0	<b>477</b>
Complaint supported	14	50	0	<b>64</b>
Inquiries and referrals				
Information provided	2676	206	534	<b>3416</b>
Referred to regulator	76	26	92	<b>194</b>
Referred to ombudservice	17	3	32	<b>52</b>
Other	217	36	5	<b>258</b>
<b>Total</b>	<b>6203</b>	<b>1001</b>	<b>1226</b>	<b>8430</b>
Complaints currently under review on Oct. 31 2008	432	462	16	<b>894</b>

## Definitions

**Out of mandate:** Complaints determined to be outside OBSI's Terms of Reference. Examples are complaints about a non-participating firm; complaints already dealt with by a court; commercial decision by a firm.

**Sent to firm:** A complaint that has not started or finished the firm internal process. The client is transferred to the appropriate office by OBSI. These are followed-up by OBSI.

**Complaint withdrawn:** A complaint that is brought by a consumer to OBSI, but then is subsequently withdrawn by the consumer because they have decided to launch legal proceedings, have decided not to pursue the complaint, etc.

**Resolved with firm:** Complaint is resolved by mutual agreement (usually a settlement facilitated by OBSI).

**Complaint rejected:** OBSI finds that the complaint does not have merit and does not recommend firm compensation or action.

**Complaint supported:** OBSI finds the complaint has merit and recommends compensation or other action by the firm.

**Information Provided:** A broad category of general inquiries, calls for firms that come to OBSI instead where the client is transferred or redirected, requests for contact information, etc.

**Referred to regulator:** Clients with questions about regulatory or legal issues regarding firms are referred to the appropriate regulator. Policy questions are referred to the appropriate government office.

**Referred to other Ombudservice:** Clients with insurance complaints which are referred to CLHIO or GIO

**Other:** A miscellaneous group of contacts such as copies of letters not requiring response, misdirected calls, etc.

**Complaint under review:** A complaint that has been received by OBSI and is in the process of being reviewed.

## CASE STUDY - SUITABILITY

The clients, a married couple in their early 50's, received a \$650,000 settlement from a car accident which permanently disabled the husband. They consulted with an investment advisor about how to invest the money.

The advisor prepared an investment proposal that described their objectives as regular guaranteed income, with some growth. The proposal said that preservation of capital was imperative. The clients signed a Know Your Client (KYC) document that provided for 40% low and 60% medium risk investments.

Their money was invested in a combination of bonds and mutual funds. Over the next six years the clients withdrew about \$250,000 (\$1,000 a month and a lump sum withdrawal to buy a house).

After six years the clients had experienced a net loss of approximately \$37,000. The advisor recommended the clients move their investments to a new asset management service. He then resigned as their advisor.

The clients believed they had lost \$100,000 and were upset that their advisor was no longer willing to assist them. They complained to the firm, but it said the investments were appropriate and did not offer compensation. The clients appealed to OBSI.

When OBSI investigated the complaint, we found that the KYC allocation of 40% low risk and 60% medium risk had been agreed to by the clients and was not inappropriate, but the investments recommended by the advisor exceeded 60% medium risk. The advisor explained that he did a correlation analysis to ensure that the portfolio as a whole remained within the client's risk tolerance. However, he was not able to provide a copy of the analysis or any evidence that he discussed this concept with the clients. OBSI found that the clients were not in a position to assess on their own the risk of their portfolio, and had relied on the advisor.

### **Conclusion**

To establish the compensation owed to the clients, OBSI compared their losses to what would have happened if they had appropriate investments. The clients lost \$43,797, but we calculated their loss would have been just \$1,124 had they been appropriately invested. We recommended that the firm pay the clients \$42,673 in compensation, and the firm agreed.

## **OBSI OUTREACH**

- Julie Rochette, from the Investments team, gave a presentation of OBSI and its role in resolving disputes to the Colloque "Les abus envers les aînés : agir ensemble pour que ça cesse ! 2e édition" held in Montréal in early April. Marie-Claude Roy, of the Banking Services team will be making the presentation when the colloque is held in Québec City at the end of the month.
- Rob Paddick, Deputy Ombudsman Investments, will be making a presentation at the Annual Conference of the International Network of Financial Services Ombudsman Schemes being held in Dublin Castle from June 24 to 26 2009.
- Doug Melville, Deputy Ombudsman, Banking Services, participated in the 2009 Financial Literacy & Education Summit held in Chicago on April 20. The summit was hosted by the Federal Reserve Bank of Chicago and was sponsored by Visa. He was part of a panel "Learning from Best Practices".
- Doug will also be making a presentation at the joint conference on Elder Law organized by Queen's University and the Canadian Bar association being held June 12-13, 2009. For more information please click on the link [http://www.cba.org/CBA/CLE/main/Elder\\_Law\\_09.aspx](http://www.cba.org/CBA/CLE/main/Elder_Law_09.aspx)