

31 January 2023



**PUBLIC INTEREST ADVOCACY CENTRE**  
**LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC**

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31 January 2023

Mr. Mark Wright  
Director, Communications and Stakeholder Relations  
Ombudsman for Banking Services and Investments (OBSI)  
20 Queen Street West, Suite 2400, P.O. Box 8  
Toronto, ON M5H 3R3

**BY EMAIL: [publicaffairs@obsi.ca](mailto:publicaffairs@obsi.ca)**

Dear Mr. Wright:

**Subject: PIAC Comments in Response to OBSI Governance Review**

The Public Interest Advocacy Centre (PIAC) provides its comments below on the Ombudsman for Banking Services and Investments' Governance Review. Since 1976, PIAC, a national not-for-profit corporation and a federally registered charity, has represented consumer interests in the provision of imported regulated services including telecommunications, broadcasting, energy, privacy, financial services, competition law, consumer protection and transportation with legal advocacy and policy research expertise.

This review comes at an important time. Consumers are facing a cost-of-living crisis while at the same time they face a high cost of borrowing from Canada's financial institutions, as the Bank of Canada attempts to bring inflation back under control.

PIAC is generally concerned about the trends in the review paper which may see OBSI further reduce its already limited consumer consultation. We hope that our comments will assist OBSI in its efforts to strengthen its governance and the way in which that governance reflects both industry and more importantly, consumers to whom OBSI is one of the only ways in which consumers can seek recourse for the many wrongs perpetrated by this industry upon them.

Sincerely,

John Lawford  
Executive Director and General Counsel

## INTRODUCTION

1. The Public Interest Advocacy Centre ('PIAC') provides the below comments on the Ombudsman for Banking Services and Investments' ('OBSI') Governance Review. PIAC is an organization which advocates for vulnerable consumers in the provision of important public services, including financial services.
2. Canadian consumers are facing a brutal economic environment. With inflation being at a nearly 40-year high, consumers are facing an affordability crisis across all sectors – including the consumer financial sector.<sup>1</sup> Those who depend on debt to make it between bills are especially vulnerable now.
3. Given this vulnerability, the role of the OSBI is more important than ever. The policy interest rate set by the Bank of Canada has some of the strongest impacts on credit products, including lines of credit and mortgages<sup>2</sup> – matters about which consumers can complain to the OSBI.<sup>3</sup> As consumers attempt to navigate the current economic tides, and in the context of their current vulnerabilities, it is more important than ever that OBSI's governance and oversight of its complaint processes is trustworthy, fair and effective if consumers are to feel confident bringing their complaints before OSBI.
4. If OSBI's goal is to achieve fair, effective and trusted governance, then representation is critical. This brief letter will emphasize the importance of consumer representation in OSBI's governance. At its core, representation is an essential indicator of fairness and for consumers to trust OSBI.

## IF OBSI IS TRULY CONCERNED WITH A FAIR, TRUSTED AND EFFECTIVE GOVERNANCE, ENSURE CONSUMER REPRESENTATION IN THE POSITIONS THAT MATTER

### *i. The Board*

5. One consumer representative board member is insufficient to create fair, trusted and therefore effective governance. Of the current ten board members, only one board member, Wanda Morris, has a dedicated mandate to represent consumer interests. The remaining members all appear to have previous or current ties to industry. Consumers cannot be expected to view OSBI's processes as fair or trust them when nine of the ten directors with responsibility to steer the organization effectively represent the industry.
6. PIAC is supportive of OSBI's focus on diversifying the background of its board members, but maintains that there needs to be positions reserved for consumers and positions reserved for industry. It is important to acknowledge the clear adversarial nature of the issues which the board is responsible for governing: fights between consumers and their financial or banking institutions, i.e., industry. **Given this, PIAC recommends that**

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<sup>1</sup> <https://www.cbc.ca/news/business/canada-inflation-rate-1.6526060>

<sup>2</sup> <https://www.bankofcanada.ca/2022/04/understanding-policy-interest-rate/>

<sup>3</sup> <https://www.obsi.ca/en/case-data-insights/case-summaries.aspx>

**the OSBI amend its board constitution to include four members representing consumers and four members representing industry plus one independent member.**

This recommendation follows the Australian example referenced on page 4 of OSBI's consultation paper.<sup>4</sup>

7. Finally, when it comes to appointing industry positions, PIAC notes that there are a number of very large players in the market, and so by removing specific representation of any group, OSBI risks favouring those large industry players, as appointees will inevitably be chosen from their 'experience' in financial and investment matters – which experience comes almost exclusively from persons who worked at financial or investment firms. Such individuals cannot be trusted to put aside their ingrained industry biases. Better decisions are made when more diverse voices are at the table, but diversity should not be used as a cover to sweep away structural representation of consumers in an ombudsman setting.

*ii. CIAC*

8. PIAC submits that if the Board is restructured as recommended above, there will be no need for a CIAC. PIAC further submits that if the Board does not restructure its representation as above, that the OBSI still should remove the CIAC. The CIAC has no influence whatever on OBSI governance. There is no mechanism in the present governance to require decisions to be made by listening to the CIAC. In our view, the CIAC is an attractive nuisance – it provides a convenient excuse for making anti-consumer decisions as the Board can claim to “consult” with consumers or “understand” their concerns, but the Board never, ever does so. We know, as we had a representative on the CIAC and it became clear that no CIAC recommendations were ever heeded. Remove it and put consumers in an equal position to the industry on the Board.

## **SOME COMMENTS ON INCREASING CONSUMER REPRESENTATION**

*i. Pay consumer organizations*

9. The organizations which OSBI notes that it engages with for the most part are not-for-profits. As the discussion paper notes, a lack of resources is a challenge to participate for many such groups. OSBI could reduce this barrier by compensating these groups for their participation, as many other governments and tribunals do. For example, the Canadian Radio-television and Telecommunications Commission ('CRTC') provides costs to groups who represent the public interest provided they can meet certain criteria, namely, that they “(i) have, or represent a group or a class of subscribers that has, an interest in the outcome of the proceeding, (ii) assisted the Commission in developing a better understanding of the matters that were considered, and (iii) participated in the proceeding in a responsible way”. This could be adapted to OBSI governance needs by approving payment to deserving groups.

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<sup>4</sup> Ombudsman for Banking Services and Investments, “OSBI Governance Review – Request for Public Comment” (1 November 2022).

10. Another example is the Department of Finance (federal government) which most recently has paid consumer groups to participate in working groups on open banking. Payment is determined at a fixed rate based on participation to a maximum of \$25,000.
11. The payment of these groups in OSBI's governance is crucial to ensure that governance is fair, effective and trustworthy. Without such payment, consumer group representatives cannot "donate" time to OBSI, no matter how worthy the cause. There are no rich consumer groups with surpluses in Canada. OBSI should recognize this.
12. PIAC would suggest that OBSI broaden its search for consumer groups. In addition to those groups listed on page 9 of the consultation paper, OBSI might consider consulting with: ACORN Canada, Momentum and the National Pensioners Federation.
  - ii. *Implement a roundtable identical to that which is already being done for industry*
13. OSBI should create roundtable sessions following the current structure of twice-yearly industry roundtables for consumer groups. The roundtables described in the discussion paper state that these roundtables occur typically in November and June, are hybrid and last about one hour. That is, they are a foreseeable and a seemingly minor commitment. There is no reason why this format could not be adopted for consumer groups. The foreseeability and low time commitment make it a manageable ask for groups with limited resources instead of sporadic consultations as needed. **PIAC is supportive of OSBI's regular discussions with consumer groups, as the discussion paper notes, but recommends that a foreseeable, one-hour long, twice-yearly roundtable be established.** Such roundtable participation should again be paid for deserving groups.

## CONCLUSION

14. PIAC is supportive of the Board's goal for ensure governance of OBSI is fair, trusted and effective. PIAC feels, however, that radical change is needed to achieve this goal. It takes courage to make significant changes, but this review is an important step in the right direction to ensuring that consumers view OSBI's governance as effective but also trusted and fair. Industry governance of an organization which oversees disputes between consumers and industry is not fair. Change is needed. Without such radical change PIAC will not further participate in any consultations with OBSI to fine-tune its governance.