



OBSI
2008
annual review



OMBUDSMAN

for Banking Services | des Services Bancaires
and Investments | et d'Investissement

accessible independent fair

Ombudsman for Banking Services and Investments (OBSI)




- The national independent dispute resolution service for consumers and small businesses with a complaint they can't resolve with their banking services or investment firm
- We work informally and confidentially to find fair outcomes to disputes about banking and investment services and products
- We look at complaints about most banking and investment services and products, such as errors, mishandled accounts, misleading information or inappropriate advice, that cause loss, damage or harm
- We may recommend compensation up to a maximum of \$350,000 for an individual or small business
- Our services are free to consumers

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For more information please visit
our website www.obsi.ca

highlights

<p>Revised Terms of Reference approved by OBSI's Board of Directors, to be implemented by Spring 2009 <i>see page 20</i></p>	<p>2009</p>
<p>Opened 670 case files, a 43% increase from 2007 and a more than 100% increase over the last two years <i>see page 6</i></p>	<p>↑43%</p>
<p>Completed more than 91 facilitated settlements, up from 23 in 2007 and 9 in 2006 <i>see page 6</i></p>	<p>91</p>
<p>93% of files completed in less than 180 days <i>see page 5</i></p>	<p>93%</p>
<p>Continued our outreach initiatives to industry, consumer groups and other stakeholders with presentations, quarterly newsletters and an updated website <i>see page 13</i></p>	
<p>Received over 14,700 contacts by telephone, email and others <i>see page 7</i></p>	
<p>Suitability and Debit Fraud are still the most frequent complaint issues <i>see pages 8/10</i></p>	

chair

With a solid foundation of experience in dispute resolution, a growing caseload and an expanding list of participating firms, OBSI continued in 2008 to evolve towards our vision of becoming Canada's premier dispute resolution service.

A year ago, I reported on the conclusion of discussions with the federal government and provincial regulators that resulted in the Framework for Collaboration. That document sets out our vital role in consumer protection in financial services, the support of governments and regulators for OBSI and provides a set of standards that we are expected to meet. At the same time, we concluded a successful external review of OBSI that found our service both effective and professional.

Perhaps the most significant achievement of the past year was the approval of the revised Terms of Reference, the document that defines the powers and scope of the Ombudsman. The revisions expand our mandate by providing a process to handle systemic, or widespread, issues that our staff encounters in the course of their reviews of complaints. We have also adapted the complaint-handling rules being introduced this year by the investment self-regulatory organizations to improve communications and timeliness in participant firm complaint handling. These changes have addressed the recommendations of our external reviewer as well as meet the guidelines set out in the Framework for Collaboration.

We still face the challenge of the lack of consumer awareness of our services. We recently commissioned a Canada-wide consumer survey and found not only low awareness of OBSI, but also that few people who had an unresolved complaint with their banking services or investments said they had been made aware of OBSI by their firm. While the new complaint-

My thanks to my colleague directors of the Board of OBSI whose commitment to our work has served Canadian consumers and the financial sector well in the past year. And my thanks go as well to the staff of OBSI. The integrity and fairness of our service rests in large part on their shoulders, and we appreciate their dedication.

“Sadly, troubled economic times usually mean a significant increase in our work. Nonetheless, that’s why we’re here: to provide an independent, impartial perspective on unresolved disputes in good times and bad.”



handling rules should help raise consumer awareness, more needs to be done. This continues to be a priority of the Board.

In a year marked by progress and growth, we regret to report that one of our founding member institutions, Royal Bank of Canada, withdrew from OBSI shortly after the passage of our revised Terms of Reference. We have encouraged the federal government to respond as we believe this challenges the integrity of the dispute resolution system that it helped create in 1996 as the Canadian Banking Ombudsman, renewed in 2002 when we became OBSI and endorsed in 2007 with its adoption of the Framework for Collaboration.

The coming year promises to be challenging. Sadly, troubled economic times usually mean a significant increase in our work. Nonetheless, that’s why we’re here: to provide an independent, impartial perspective on unresolved disputes in good times and bad. Our team is up to the job.

A handwritten signature in black ink, appearing to read 'P. Brown', written over a thin horizontal line.

Dr. Peggy-Anne Brown
CHAIR

ombudsman

We saw some significant and exciting achievements for OBSI in 2008.

For the second year in a row, we saw a large jump in the number of consumers bringing their unresolved complaints to our dispute resolution service. In fact, 2008 was a record year for OBSI as we opened more files than in any other year in our history.

The Terms also set out a new framework for firm-level complaint-handling that will improve communications to consumers and provide timelines for resolution of disputes. These changes align our mandate with the expectations of the regulatory community, who have determined that OBSI's work is an important

Looking Ahead

Less positively, through 2008 the economic and financial picture for Canadians worsened dramatically. As I write this, stock markets have suffered steep losses and the economy has settled into a recession. The pain is widespread, and we can expect a demanding 2009 and beyond.

Fortunately, thanks to our dedicated and experienced staff, we face the future with confidence and a deep commitment to the impartial and independent service we are proud to provide to Canadians. My sincere and appreciative thanks to them.

In closing, I want to express my gratitude to our Chair Dr. Peggy-Anne Brown and our Board of Directors for their unstinting leadership and support of the important work we do.



“We continue to evolve our processes and bring innovation to our dispute resolution work. Consumers and firms alike are responding positively, and significant resources and time are being saved.”

Our outreach efforts are clearly working as we build increased awareness of OBSI among consumers and stronger relationships with our stakeholders.

Moving Forward

It was also a year of change. Following an extensive consultation period, our Terms of Reference were revised with some important changes to our mandate. When they come into effect later in 2009, the Terms establish a procedure for handling systemic or widespread issues that we find in the course of our investigation work.

part of the financial services consumer protection framework.

Innovation in Our Work

We continue to evolve our processes and bring innovation to our dispute resolution work. Last year I reported on our new emphasis on facilitated settlements, which can be a more efficient and timely approach to resolving many disputes. In a short two years, the number of facilitated settlements we reached has jumped 10-fold, from nine in 2006 to 91 in 2008. Consumers and firms alike are responding positively, and significant resources and time are being saved.

A handwritten signature in black ink.

David Agnew
OMBUDSMAN

dispute resolution



OBSI – Who We Are

The Ombudsman for Banking Services and Investments, or OBSI, is a national independent dispute resolution service for consumers or small businesses with a complaint they can't resolve with their financial services firm.

Established in 1996 as an alternative to the legal system, we work informally and confidentially to find fair outcomes to unresolved disputes about banking and investment services and products. We are free to consumers. Our funding is provided from a levy on all participating firms.

If we find an error, misleading advice or other maladministration that has

caused a loss to a consumer, we may recommend compensation up to a maximum of \$350,000 and non-financial remedies such as an apology.

Our independence is assured by a board of directors with a majority of independent directors and strong safeguards for our independence and impartiality.

Client Service Survey

We seek feedback from our clients who have been through an investigation or facilitated settlement by a mail-in survey, regardless of the outcome of the case. In 2008 the response rate to our survey was about 40%.

Overall results showed that 86% of clients rated our quality of service excellent or good. While we can always improve, we were pleased to note that level of satisfaction given that we did not support the complaint of nearly 40% of survey respondents.

However, we were disappointed to see that 61% of clients told us that they were not informed by their firm that they had the right to bring their complaint to OBSI.

This is an increase from past years, and confirms that current communications about the complaint handling system are often inadequate. That elevated number also reinforces the need for better and more frequent communication to clients by firms about the complaint-handling system such as are in the pending rules from the investment industry self-regulatory organizations and our revised Terms of Reference.

How OBSI works

Our staff, with a wide variety of experience and training in financial services, law, accounting, dispute resolution and regulatory compliance, review unresolved complaints from consumers about banking and investment services and products, such as errors in accounts, poor disclosure and inappropriate advice.

If we find the firm has caused a loss, we will recommend a settlement that aims to make the customer whole. We may also recommend compensation for inconvenience in the appropriate circumstance, or non-financial actions such as correcting a credit record. If we find the firm has acted appropriately, we will write to the customer to explain why we came to that conclusion.

In recent years we have been improving our procedures through new processes and innovation aimed at resolving disputes faster while maintaining the quality and fairness of our conclusions.

When we receive a complaint, our assessment team looks at the file to make sure it falls within our mandate. For instance, the firm has to be one of our participating banks, trust companies, credit unions, investment dealers, mutual fund dealers and managers and scholarship plan dealers. We also look for a final answer from the firm to the consumer, which allows us to start our review knowing the positions of both firm and consumer.

“I felt I was justly heard, professionally dealt with and although disappointed, am fine with the decision put forth”

OBSI Client Comment

Depending on the file, we might try to resolve the dispute with a facilitated settlement between the client and firm that aims to address the complaint quickly with a fair outcome to both parties. We may use a more formal mediation process. Or it could be a full investigation. If we believe that the facts of the case do not warrant further review, we will let the consumer know quickly. We always make sure that we explain our reasons, just as we do for firms when we are recommending compensation.

In the last three years, we have increased the number of facilitated settlements from nine in 2006 to 91 in 2008 – meaning a quicker resolution for consumers and firms to a dispute they couldn’t resolve by themselves. It’s part of the reason our timeliness has improved steadily in recent years, with 93 per cent of our cases closed within 180 days in 2008, well exceeding our target of closing 80 per cent in that time period.

After reviewing the facts of the case, OBSI will make a decision based on “fairness in the circumstances” to both the client and the firm. We take into account laws, regulations, industry standards and practices as well as any standards established by regulatory bodies, professional associations or the individual firm involved.

As neither a court nor a regulator, OBSI does not fine or discipline firms or individuals. Our recommendations are not binding on either party, but we have an excellent record of acceptance of our recommended settlements from both firms and clients. In 2008 all of our recommendations for compensation were accepted by firms.

While we do not handle matters that have been through a court or an arbitration, if a client is not satisfied with our conclusions, they are free to pursue their case through the legal system, subject to statutory limitation periods.

OBSI’s Commitment to You

The Ombudsman for Banking Services and Investments is committed to achieving excellence in our dispute resolution service. Our standards are designed to ensure a high-quality, independent and fair dispute resolution process for consumers of financial services in Canada.

Our Code of Practice commits us to achieving high standards of excellence in 11 separate areas of our operation and governance including accessibility, fairness and independence, timeliness and competence. These standards were based in part on emerging international complaint-handling standards through the ISO.

We are committed to regular independent reviews of our operations. Our last review, in 2007, found our service to be professional and effective.

Participating Firms

All financial services firms regulated by the federal or provincial governments are eligible to become a participating firm in OBSI.

Current participating firms include:

- Domestic and foreign-owned banks
- Credit unions
- Investment Industry Regulatory Organization of Canada (IIROC) member firms
- Mutual Fund Dealers Association of Canada (MFDA) member firms
- Investment Funds Institute of Canada (IFIC) member companies
- RESP Dealers Association of Canada (RESPDAC) member firms
- Federal trust and loan companies and other deposit-taking organizations

Our full Terms of Reference and guides for both consumers and participating firms are available on our website at www.obsi.ca.

Please visit our website at www.obsi.ca for more information on our Code of Practice and the 2007 independent review.



For more information please visit our website www.obsi.ca

overview



OBSI experienced a large jump in caseload in 2008 for the second year in a row, with a record 670 files opened in the year. That was a 43 per cent increase from the previous year, more than doubling the number of cases coming to OBSI over the last two years.

The increase is likely from two reasons. First is growing awareness of OBSI, particularly among referral sources who are in contact with many consumers each year. That reflects significant effort by OBSI to build a broader network and a higher profile. Second is better communication by some firms telling their customers who have made a complaint, but are not satisfied with the firm's response, that they can bring their complaint to OBSI for review.

However, we have a long way to go. Too many clients are telling us that their firm did not tell them about OBSI and their right to bring their case to us.

Later in 2009 we expect the complaint-handling rules from the two investment self-regulatory organizations to be in effect, as well as OBSI's own revised Terms of Reference. These include improved communications requirements that will ensure consumers are aware of their options in the complaint process and get their complaint handled faster. These are necessary advances in consumer protection and dispute resolution in financial services in Canada.

We are looking forward to the day when we are confident that every customer of a participating firm knows they can bring their complaint to OBSI if they are not satisfied with how their firm responds to it. That will require the active support and participation of regulators and financial services firms.

Overall, we opened 346 investment files and 324 banking services files. A total of 167 files went to full investigation, a slight drop from the year before despite our overall growth. That's because of our increased emphasis on facilitated settlements as a way of resolving disputes. These settlements are a quicker and more efficient way of reaching agreement, and allow the parties to avoid going through a full and lengthy investigation. We have had positive feedback from both clients and firms to our efforts to resolve more files through facilitation.

Of the 656 files we closed in 2008, 91 were facilitated settlements. That was a 10-fold increase from just two years ago.

Compensation

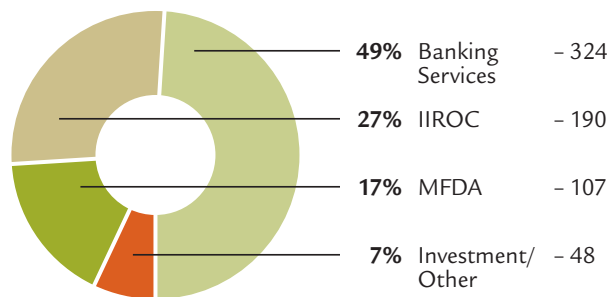
During the year, OBSI facilitated settlements involving compensation for clients in 91 cases and made 64 recommendations for compensation after doing a full investigation. All OBSI recommendations were accepted by firms in 2008. In another 103 investigation files we upheld the firm's position.

Small Business

This year, we received 19 complaints from small businesses with five going to investigation. In banking services, five of the complaints were about transaction accounts and two were about loans. Two were about other issues. In investment files, the complaints were a mix of suitability, service issues, poor performance and unauthorized trading.



Opened cases in 2008



Opened cases over 12 years



Contacting OBSI

While the telephone is still the most common way of contacting OBSI with an inquiry or complaint, other channels of communication are growing, particularly email. Phone calls remain the largest proportion of the more than 14,000 contacts we recorded in 2008 through our Consumer Assistance Officers.



Where do our complaints come from?

As a national service, OBSI gets complaints from coast to coast to coast, and everywhere in between. We also see files from customers of participating firms living abroad who have banking and investment accounts in Canada. This table compares the percentage of complaints received by OBSI by province or territory compared to its percentage of the population of Canada. The proportionately lower number in Québec reflects that the caisses populaires Desjardins do not participate in OBSI at the banking services level.

Province/Territory	Complaints	Population
Alberta	7%	10.6%
British Columbia	15%	13.3%
Manitoba	2%	3.6%
New Brunswick	1%	2.3%
Newfoundland & Labrador	1%	1.5%
Northwest Territories	0%	0.1%
Nova Scotia	1%	2.8%
Nunavut	0%	0.1%
Ontario	54%	38.8%
Prince Edward Island	0%	0.4%
Québec	14%	23.4%
Saskatchewan	1%	3.0%
Yukon	0%	0.1%
International	1%	
U.S.A	1%	
Unknown	1%	
Total	100%	100%

- More than 14,000 individual contacts were recorded in FY08
- Our website complaint form is being used on average once a day to register a complaint
- The OBSI website had nearly 22,000 unique visitors and more than 180,000 page views.

banking services



Our banking services complaints come from domestic and foreign-owned banks, trust companies and credit unions. In the fluid world of financial services, we see investment product issues arise in banking files as “wealth management” spills across the former silos of banking, investment and insurance.

The products involved in our banking services investigations were:

	2006	2007	2008
Loans	9	22	15
Transaction accounts	20	13	17
Debit cards	19	10	9
Credit cards	13	8	8
Term Deposit/GIC	2	3	1
Other	21	18	13
Total	84	74	63

The major issues raised in banking services investigations were:

	2006	2007	2008
Fraud	27	25	20
Service issues	10	19	18
Unauthorized transactions	11	4	4
Collection activity	4	5	2
Credit rating	2	3	2
Transactional error	3	3	2
Other	27	15	15
Total	84	74	63

Commentary

The “big three” issues in banking services continue to be accounts, loans and cards, with some shifting in the ranking of the products from year to year. In 2008, transaction accounts and card complaints tied for largest category of files. The transaction accounts complaints often involved issues of fraud or service, while loan issues predominantly involved issues around payment terms.

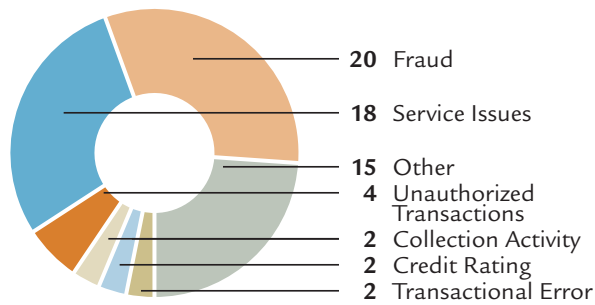
Compared to past years, relatively few complaints were about mortgage pre-payment penalties. Card complaints continued to be a large category reflecting the widespread fraud activities involving both debit and credit cards.

A new issue that arose in 2008 was a flurry of complaints from customers of two major financial institutions that had summarily closed customer accounts, both personal and small business. The

type of businesses affected were remittance and cheque-cashing operations, and the individuals who brought their complaints to us all had transactions with certain Middle Eastern countries. Our role in these cases is limited to determining whether the bank gave the customer sufficient notice to find another banking services supplier; otherwise, we take the view that the bank has taken a commercial decision and has the right to decide with whom it does business. In the end, all the clients in the cases we saw were given sufficient time to rearrange their affairs.

However, subsequent research indicated that the likely source of the actions by the firms was new and tougher anti-money laundering legislation, aimed in part at ensuring these illegal activities aren’t financing terrorist organizations. Under that legislation, not only do firms risk their reputation, but face stiff penalties, if they are found to be associated with money laundering activities. The banks had simply ended their relationships with customers doing transactions in certain “hot” countries. We suggested the clients get in touch with the federal government to air their views on how they were affected by this legislation.

Major Issues in 2008



Cases opened in 2008



Cases opened in 2007



Cases opened in 2006

“Thank you for your help and having solved the problem so quickly. You have removed a heavy burden from me. I would not have been able to solve the problem myself, alone, without help from you and your organization”

OBSI Client Comment

Opened Investigations by Firm

1	Alterna Bank
8	Bank of Montreal
1	BMO Harris Investment Management Inc.
5	CIBC
5	Citibank
1	Citizens Bank of Canada
3	Laurentian Bank
6	National Bank of Canada
10	Scotiabank
17	TD Bank Financial Group
6	RBC
63	

Cases closed

	2006	2007	2008
Investigations	62	65	84
Early Resolutions	85	175	237
Total	147	240	321



For more information please visit our website www.obsi.ca

investments



More than half of investigations opened by OBSI in the year were related to investment issues.

OBSI’s member firms involved in investments come from three major groups. Investment dealers are regulated by the Investment Industry Regulatory Organization of Canada (IIROC), formerly the Investment Dealers Association of Canada (IDA). Client accounts may include stocks, bonds, mutual funds and other investment products. Mutual fund dealers are regulated by the Mutual Fund Dealers Association of Canada (MFDA) and are limited to dealing in mutual funds and other exempt products. Members of the Investment Funds Institute of Canada (IFIC) include the companies that create, manage and market mutual funds. We also review complaints from customers of scholarship trust plan dealers that are members of the Registered Education Savings Plan Dealers Association of Canada (RESPDAC).

- the growing complexity of financial products, most recently evidenced by the troubled Asset-Backed Commercial Paper, or ABCP, but also in Principal Protected Notes, income trusts, and other financial instruments beyond the comprehension of most investors and a number of advisors; and
- widely acknowledged low levels of financial literacy among Canadians.

All of these factors reinforce the need for well-informed advice, independently and clearly delivered, to retail investors. Unfortunately, they also give rise to situations where the unsophisticated investor is ill-served by an advisor, either through error, incompetence or outright abuse.

We note the importance of the requirement that advisors must “know your product” in addition to “know your client.” Some of the largest retail-level investment frauds and losses in recent history have been fuelled by inadequately informed advisors selling products they knew little about, in some cases to investors who shouldn’t have held them.

As we have said in past years, behind virtually every suitability case is a failure of disclosure, or poor communication. Full and plain disclosure is not a magic solution for every suitability issue, but it would prevent the majority of suitability complaints we see every year.

The products involved in our investments investigations were:

	2006	2007	2008
Mutual Funds	62	50	40
Securities	29	32	40
Securities & Funds	19	12	2
Other	2	11	19
Segregated Funds	1	2	3
Total	113	107	104

The major issues raised in investments investigations were:

	2006	2007	2008
Suitability /KYC	55	41	59
Fees	8	11	5
Leverage	8	7	6
Service issues	3	8	2
Poor performance	9	7	7 <small>modified category</small>
Misrepresentation	6	7	6
Other	24	26	26
Total	113	107	104

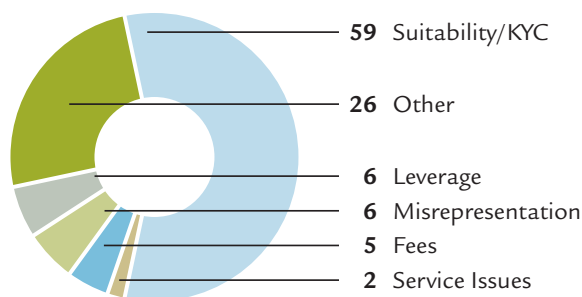
Commentary

Suitability continues to be the single largest category of complaints in investments. We see three factors contributing to the prevalence of suitability complaints:

- the increasing number of defined contribution pension plans, making people who used to be plan beneficiaries responsible for their own investment decisions;



Major Issues in 2008



“Without the help we received we would not have recovered any of our losses. This has been a tremendous relief and we wish to express our appreciation and thanks”

OBSI Client Comment



Cases opened in 2008



Cases opened in 2007



Cases opened in 2006

Opened Investigations IIROC Member Firms

1	Aquilon Capital Corp
2	Argosy Securities Inc.
1	Assante Capital Management Ltd.
4	Blackmont Capital
5	BMO Nesbitt Burns Inc.
5	Canaccord Capital Corporation
2	Desjardins Securities Inc.
3	Dundee Securities Corporation
3	Edward Jones
1	HSBC Securities (Canada) Inc.
1	Industrial Alliance Securities Inc.
2	Interactive Brokers Canada Inc.
1	MacDougall, MacDougall & MacTier Inc.
1	Manulife Securities Incorporated
1	Merrill Lynch Canada Inc.
1	National Bank Financial Ltd.
1	Octagon Capital Corporation
1	Queensbury Securities Inc.
1	Questrade, Inc.
2	Raymond James Ltd.
4	RBC Dominion Securities Inc.
1	Research Capital Corporation
1	Richardson Partners Financial Limited
2	Scotia Capital Inc.
7	TD Waterhouse Canada Inc.
1	TradeFreedom Securities Inc.
2	Wellington West Capital Inc.
1	Wolverton Securities Ltd.
1	Worldsource Securities Inc.
59	

Opened Investigations MFDA Member Firms

2	Altamira
1	Armstrong Financial Services Inc.
3	Assante
2	Canfin Magellan Investments Inc.
1	CIBC
1	Credential
1	Dundee
2	Farm Mutual Financial Services Inc.
1	FundEX Investments Inc.
1	HSBC
1	Hub Capital Inc.
1	Interglobe Financial Services Corp.
5	Investors Group
4	IPC
1	Keybase Investments Inc.
1	Legacy Investment Management Inc.
7	Manulife
2	Peak
1	Queensbury
1	Sun Life Financial Investment Services (Canada) Inc.
2	Wellington West
3	WFG Securities of Canada Inc.
1	Worldsource
45	

Cases closed

	2006	2007	2008
Investigations	66	104	114
Early Resolutions	50	103	211
Total	116	207	325

our involvement

Our office is headed by David Agnew, the Ombudsman since 2005. The Ombudsman is appointed by the Board of Directors, and must be independent of both industry and government.

The appointment of the Ombudsman is made on the recommendation of the Independent Directors Committee for a renewable term of up to five years. The Ombudsman cannot have been a government employee or have worked for or been closely associated with a participating firm for five years prior to appointment.

35

Full- and part-time staff members across Canada

Our People

OBSI's experienced and professional staff is drawn from a variety of fields and disciplines such as law, accounting, finance, banking and investments. Our staff is committed to conscientious, fair and timely dispute resolution, which is evident in their dealings with all parties.

We currently have 35 full- and part-time staff members across Canada. Our team of consumer assistance officers responds

to the thousands of initial inquiries and complaints that are received by phone, email, online, letters and faxes each year. We have two teams of assessment staff and investigators, one for banking services and the other for investments, responsible for reviewing files in more depth. Each is headed by a Senior Deputy Ombudsman. Our manager of administration is responsible for overseeing the office and the manager of public affairs oversees outreach and communications activities.

“The OBSI is providing a very good service for people in my situation. I want you to know I appreciate it very much”

OBSI Client Comment

“When I made my decision to take my dispute with my financial services firm to OBSI, people around me were very discouraging. I am glad I did not listen to them”

OBSI Client Comment

Reaching Out

We continued to expand our outreach initiatives in 2008 on a number of fronts: participating in different conferences, roundtables and presentations, publishing our e-newsletter and receiving media coverage in both national and local media.

OBSI is also part of the Joint Standing Committee on Retail Investor Issues, an Ontario-based initiative made up of the Investment Industry Regulatory Organization of Canada (IIROC), Mutual Fund Dealers Association of Canada (MFDA), the Ontario Securities Commission (OSC) and OBSI.

The committee focuses on matters relating to retail investors, such as enhancing investor education, promoting greater transparency of

investment products offered for sale to retail investors, and strengthening the effectiveness of retail investor protection.

Through the year we also received coverage in publications and media including: *The Globe and Mail*, *Investment Executive*, *La Presse*, *Protégez-vous*, *CARP Action Online*, *BNN-TV*, *Toronto Star*, *Advisor.ca*, *National Post* and many others.

OBSI publishes a quarterly e-newsletter for its stakeholders including participating firms, consumer groups and other interested parties. The newsletter is also available on our website.

Here are some of the conferences and meetings we participated in in 2008:

- Reaching Higher: Canadian Conference on Financial Literacy, Montréal
- BCSC Capital Ideas, Vancouver
- IFIC Conference, Investment Complaint Handling: Navigating the Process, Toronto
- Osgoode Hall, Industry Roundtable on Dispute Resolution in Retail Investors Loss Cases, Toronto
- International Financial Ombudsman Conference, New York
- L'Union des consommateurs, Consumer advisor training session, Québec City
- Osgoode Hall, 2nd Annual Managing Internal and Regulatory Investigations Program
- Canadian Conference on Elder Law, Vancouver

We also made presentations on our service to individual firms in Ottawa, Vancouver and Toronto.

banking services

Government Rule Change Leads to Possible Unintended Consequence

A client's small business received notice that its accounts were to be closed by the bank in two weeks. The client was shocked, saying he had a long-standing and satisfactory relationship with the bank and that the bank would not provide reasons for the termination of the relationship. The business owner, originally from a Middle Eastern country, claimed that racial profiling was a factor in the bank's decision.

The business owner approached other banks to open an account but was refused by every one of them. As his business involved cheque cashing and sending money overseas for customers, not having a bank account meant he could no longer stay in business. He felt that the banks were deliberately putting him, and similar operations, out of business.

OBSI reviewed the correspondence from the bank and confirmed the two-week notice of account closure and the lack of explanation provided for the bank's action.

OBSI's Terms of Reference do not include reviewing a bank's general business or risk management decisions. This includes a decision to end a banking relationship with a customer. However, we were concerned with the short notice period provided. In these cases, OBSI will seek to confirm that a customer was provided

with sufficient time to make alternate banking arrangements. Generally, one month's notice is considered sufficient. In this case, by the time the bank actually closed the account, over two months had passed from the date of the original notice letter.

We concluded that the bank had terminated the relationship and closed the account based on a general business or risk management decision. We also concluded that, in the end, sufficient notice had been provided to make alternate banking arrangements.

We made no recommendation for compensation.

The reason for the account closure was later confirmed when OBSI was informed that changes had been made earlier in 2008 to federal anti-money laundering and terrorist financing laws. These changes prompted some banks to re-assess their risk management policies concerning business and personal customers engaged in transactions to or from certain "high-risk" countries.

The client was referred to the Canadian Human Rights Commission to address his accusation of racial profiling. The client was also referred to the Minister of Finance to raise the public policy issue of banks either closing or refusing to open accounts for a certain class of businesses thereby forcing them to close.

Credit Card Fraud

An 82-year-old woman received a letter from her friend in which the friend admitted she took \$1,940 from the client's bank account before leaving the country. The client immediately informed both the police and her bank.

After going through her finances with the help of her niece, the client discovered that the first fraudulent activity involved an \$8,000 cheque written on her account with a credit card cheque three years prior. Her credit card statement showed the transaction, but the elderly client misread it and didn't see the emerging fraud problem. Over a period of three years, the friend had "borrowed" approximately \$75,000 through the client's credit card account through the use of cheques and cash advances. Although her friend made repayments, about \$63,000 in cheques written by the friend bounced. The client claimed she was the victim of a fraud and asked the bank to forgive the debt on her account.

The bank acknowledged that the client's friend was later convicted on several charges of fraud relating to the client's account. However, in the bank's view the client was not completely unaware of the outstanding debt. The bank cited a telephone conversation in which the client had asked about the disputed charges. She told the bank that she had given her card number to her friend to use in case of emergencies. She had also given her friend her telephone banking password to make certain transactions on her behalf.

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Cases closed in banking services

Since the client had given her friend her telephone banking password, the bank said it was reasonable to assume that the client's credit card personal identification number (PIN) had also been disclosed by the client. The bank concluded that the client was responsible for the losses but was prepared to accept partial repayment for the outstanding card balance provided the client submitted a statement of her financial affairs. The client did not agree to the proposed settlement terms.

Our investigation confirmed that the PIN number was correctly entered to make the cash advances with the client's card and then the card was returned to the client. The signatures on the cheques appeared to be that of the client. The client had accepted her friend's transactions on her account for two years and we didn't believe it was reasonable to dispute them a year later when the fraud on her account came to light. The client's friend gradually increased her use of the client's card and we did not see a sudden change in the pattern of account activity which would have alerted the bank to the friend's unauthorized use of the client's card. The client's pattern of behaviour toward her friend indicated that she trusted her completely and left herself open to the fraud by willingly sharing her card and PIN.

We concluded that the client did not exercise proper care and control over her card, PIN and other financial information, which directly contributed to the fraud loss. We did not recommend compensation for the client.

“We could not have been more pleased with how the case was investigated. Keep up the good work in helping resolve people's financial problems. Thank you all very much”

OBSI Client Comment

Transaction Account

A client opened an offshore US dollar savings account through the Canadian branch of a foreign bank. For regulatory reasons, the Canadian branch's role merely was to pass on the account opening information to the international head office. The servicing of the client's needs was to be done by the foreign bank directly through its call centre.

After the account was opened the client deposited about USD \$200,000.

The client subsequently relocated from Canada to the US. The client mentioned the relocation to the bank's branch in Canada and left with the impression that no further action was required from her.

In the meantime, the foreign bank sent an access card to use at ABMs to the customer's former Canadian residence using a courier service that did not require a customer signature.

The foreign bank then sent the PIN for the access card in a separate package to the Canadian address, also by courier requiring no signature.

Someone other than the client received both the access card and PIN. Over the period of several months, the entire balance of the account was withdrawn.

Months after moving to the US, the client checked with the foreign bank and discovered the money was missing.

She filed a police report and asked the bank to replace her missing funds.

The bank said that the access card and PIN were sent to the last known address on record using their standard procedures. They said the client was responsible for informing the foreign bank of her change of address. There was no record of her informing them of the change. The Canadian branch was not permitted to service the account and therefore any conversation the customer may have had with them did not relate to her account or relationship with the foreign bank. The foreign bank denied her compensation, and she appealed to OBSI.

While the foreign bank was not a participating firm, the Canadian branch was. Following our review of the complaint, we concluded that compensation was appropriate. OBSI discussed the matter with the staff of the Canadian branch of the bank and sent a package incorporating our analysis to the head office. We believed that it was reasonable for the client to think that she had given the bank her new address since she was not told by the Canadian branch to either contact the international contact centre, or that it could not act on her information.

Based upon our analysis and our assessment, the foreign bank compensated the client for the lost amount plus interest at the rate that the funds would have earned in the account.



For more information please visit our website www.obsi.ca



investments

Commuting Pensions

The client had worked at a public utility for about 15 years when he changed careers to become a teacher. After leaving his job, the client received a benefit statement for his utility pension, which he sent to his financial advisor. The advisor told him that he could transfer the pension to a locked-in retirement account (LIRA) and helped him complete the transfer documents.

About six months later, the client discovered that he had the option to buy additional pension benefits with his new employer. This was an attractive option because it would entitle him to significant additional pension benefits and would allow him to retire earlier with a full pension. His advisor arranged for him to complete the pension buyback using the money he had transferred to his LIRA, money from his RRSP and a low-interest loan.

The client later learned that he could have paid about \$40,000 less and retired three years earlier if he had done the buyback the previous year. He also said that his advisor had been negligent in failing to provide the option to transfer the pension between plans.

The firm replied that the client had received full disclosure of his pension options from both his new and previous employer. It said that the client had not asked about his other choices because he wanted to transfer to an investment program his advisor had recommended.

OBSI investigated the complaint. The advisor had advertised her Certified Financial Planner (CFP) designation, had signed a financial advice agreement with the client and had provided a detailed written financial plan. The client said he relied entirely on his advisor. The advisor said that she was aware of the option to transfer into the new pension plan rather than to a LIRA, but did not discuss it because the client did not ask.

Given her credentials and her undertaking to provide comprehensive financial advice, we concluded the advisor should have informed her client of his various pension options or referred him to a specialist. At the same time, we found that the client did not review his pension documents or ask his plan administrators about his options. In our view, the advisor had a greater degree of responsibility in the circumstance. We recommended that the firm compensate the client for 80% of his losses.

Unauthorized Trading

The client was a sophisticated investor, and recently started dealing with a new advisor and a new firm. Her investment objectives were 100% capital gain and she had a medium to high tolerance for risk. She also had a high level of investment knowledge and experience.

Her advisor recommended a number of investments to meet her goals, which she approved. However, within a month of transferring her investments to him, the client received a confirmation for a transaction that the advisor had not discussed with her. She called him and complained about the unauthorized trade. The advisor apologized, but persuaded her of the merits of the investment. While she was skeptical, she decided to go along with his recommendation to see if his predictions for the investment would be accurate.

Over the course of the next year and a half, the advisor completed many transactions for his client, but made more than a dozen trades that he did not discuss with her prior to completion. The client received trade confirmations for each transaction. She raised some of these, but ultimately followed his advice and did not ask him to reverse the transactions.

When her advisor eventually left the firm, the client complained about the unauthorized trading to her new advisor. He immediately referred the complaint to a manager.

The firm said it believed that some trades had not been authorized before they were executed, but said that the client

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Cases closed in investments

“This service is welcomed among the ordinary folks who have trouble grasping financial investing”

OBSI Client Comment

should have complained earlier. It noted that she had received trade confirmations that told clients to promptly notify the firm of any errors or omissions.

We interviewed the client and confirmed that she was aware of the unauthorized trades. While she had questioned the advisor about the unauthorized trades, on each occasion she accepted his advice to keep the investments and did not complain to anyone else at the firm.

In coming to our conclusions, we took into account the fact that the client was an experienced and sophisticated investor. She reviewed her trade confirmations and account statements regularly. While she spoke to her advisor, in the end she agreed to the transaction and waited to see how the investments fared.

Had the client complained promptly, we would have expected the firm to reverse the trade at no cost to her. We decided that in the circumstances the client couldn't have it both ways – waiting to see how her advisor's unauthorized recommendations would do, but then making a complaint if they didn't go well. We didn't recommend compensation.

However, the case does illustrate the difference between OBSI, which focuses on compensation, and the regulators, who set and enforce the rules for the investment industry. Unauthorized trading is a breach of regulations, and the firm is responsible for reporting such complaints to its regulator.

Facilitating Settlements

The client had opened a group RESP for each of her two children with a scholarship plan dealer. After a year, she started experiencing administrative problems with the plans. The problems persisted and she was not able to get a clear explanation from the firm's telephone representatives. As a result of the problems, she incurred additional administrative fees and was unhappy with the firm. She complained to the firm and, not satisfied with its response, brought her complaint to OBSI.

In reviewing the file, we found the complaint and the firm's response confusing. The firm told us it wanted to resolve the matter but it didn't understand what the client wanted. While usually OBSI allows firms to fully respond to complaints before we review a dispute, in this case the relationship between client and the firm had deteriorated and they were at an impasse. The firm agreed to have OBSI involved in their discussions and help facilitate a settlement.

We interviewed the client and found that her complaint was far more complex than the correspondence indicated. We contacted the firm, outlined the client's specific issues and explained that we had some concerns with the firm's administrative practices.

Unfortunately, the firm's next response to the client focused on the same limited issues as its previous responses. Since the firm was still not addressing her most significant issues, the client asked OBSI to proceed with an investigation. Instead, OBSI helped her write an email that clearly outlined her concerns and the restitution she was seeking. This time, the firm agreed to give the client what she had asked for. However, now the client rejected the offer.

Since the offer was essentially what she had asked for, we contacted the client to discuss her change of mind. She told us she was still angry with the firm and believed it should now pay her more. We acknowledged her frustration, but indicated that the offer was in our view reasonable in the circumstances.

Upon reflection, the client accepted the offer. She said that while it did not compensate her for her frustration, it would allow her to transfer her plans without any losses and put the complaint behind her. For its part, the firm did not feel it owed all of what it eventually offered and paid, but accepted that it was partly at fault and the settlement finally resolved a time-consuming complaint.



For more information please visit our website www.obsi.ca

governance



Our governance structure ensures the Ombudsman and OBSI's staff are independent and impartial, and have the necessary resources to carry out their jobs.

A non-profit and independent organization, OBSI is overseen by a Board of Directors. A majority of the directors are independent, and have not been part of industry or government for at least five years. A minority of the directors are appointed by industry bodies. The directors also comprise the voting membership of the organization.

Beyond the composition of the Board, further important safeguards of OBSI's independence are in place. In addition to having at least a two-thirds majority on the Board, the Independent Directors control the hiring and firing of the Ombudsman, the budget process, the Terms of Reference and the nomination of Independent Directors.

The Independent Directors search for new independent board members, balancing diversity, geography and a variety

of backgrounds and skills. Collectively, the directors have experience in business, law, consumer affairs, economics, community organizations, dispute resolution and public service.

The Board of Directors meets at least quarterly, and in addition has an annual strategic planning session. The Independent Directors also conduct performance reviews with the Chair every two years.

Rules prohibit the Board or individual directors from being involved with individual complaints. The final decision concerning complaints rests with the Ombudsman. There is no appeal to the Board, nor can the Board influence the decisions of the Ombudsman. However, on behalf of the Board the Chair does consider complaints from OBSI clients who believe that their case has not been handled fairly.

Board Committees

The OBSI Board of Directors has four committees: Audit, Pension, Standards and Independent Directors. There is also a Compensation sub-committee.

- The Audit Committee meets quarterly and reviews the financial statements of the organization, as well as receiving the report of the external auditor of OBSI.
- The Pension Committee oversees the defined contribution pension plan for OBSI, including reviewing fund performance.
- The Standards Committee recommends and monitors OBSI's quality and performance standards, independent reviews and the Code of Conduct, as well as overseeing any revisions to the Terms of Reference.
- The Independent Directors Committee has several duties, including overseeing the hiring and firing of the Ombudsman, the budget process and director nominations.
- The Compensation sub-committee, which reports to the Independent Directors Committee, oversees the performance management of the Ombudsman and his compensation.

All members of the committees and sub-committee are Independent Directors.

directors

Independent Directors

Dr. Peggy-Anne Brown, Chair

Vancouver

Dr. Brown is President and Co-owner of Brown Crawshaw Inc., a Vancouver-based company specializing in employee and family assistance programming, critical incident response and wellness training. Dr. Brown, a psychologist, is an active major shareholder in two other human resources consulting firms.

Adrian Burns

Ottawa/Calgary

Ms. Burns currently serves as Vice-Chair of the National Arts Centre Board of Trustees and is a member of the board of directors of Shaw Communications Inc. Ms. Burns is a past full-time commissioner of the CRTC as well as a former director of the Copyright Board of Canada. Ms. Burns also serves on the boards of several business and community organizations, including Banff Centre National campaign, Carthy Foundation, Ottawa Art Gallery and the RCMP Heritage Centre.

Leonard G. (Len) Flett

Winnipeg

Mr. Flett, a management consultant, is a retired executive with The North West Company, the leading retailer in northern markets. He is currently Chair of the National Aboriginal Achievement Foundation, past-president of Me-Dian Credit Union, past-chair of Aboriginal Business Development Corporation (Winnipeg) and past director of Winnipeg 2000 (City of Winnipeg Development Corporation). He is also a member of the Order of Canada.

Daniel F. Gallivan

Halifax

Mr. Gallivan is the Chief Executive Officer and Managing Partner of Cox & Palmer, an Atlantic Canada law firm. He specializes in corporate commercial, energy, and securities law. Mr. Gallivan is also a former director of the Bank of Canada and a former Vice-Chair of the Nova Scotia Securities Commission.

James R. Savary

Toronto

Dr. Savary is Associate Professor of Economics Emeritus at York University in Toronto, specializing in financial institutions and markets and in monetary theory and policy. He is Chair of the Board of Directors of the Canadian Motor Vehicle Arbitration Plan, a member of the Board of Directors of the Travel Industry Council of Ontario, and a member and past chair of the Stakeholder Advisory Council of the Canadian Payments Association. He is also an active participant in the work of the Canadian Standards Association and the Standards Council of Canada.

Denise Verreault

Les Méchins, QC

Ms. Verreault is President and CEO of Groupe Maritime Verreault, a marine company based in the Gaspé region with subsidiaries in ship-building, ship conversion and ship repair. She sits on the boards of several corporations and organizations and holds an honorary doctorate degree in Management from the University of Ottawa. Ms. Verreault is a companion of the Order of Québec and a member of the Order of Canada.

Director Emeritus

The Hon. Lincoln Alexander

Industry Directors

Daniel W. Brintnell

President

Linell International Inc.

Wendy Hannam

Executive Vice-President

Personal Banking and Distribution, Canada
Scotiabank

Ed Legzdins

Senior Vice-President, Retail Investments
and Managing Director, International
Private Client Group and BMO Capital
Markets, BMO Financial Group

Director Compensation

Independent Directors receive a \$10,000 annual honorarium and \$1,800 for each meeting day. The Chair receives an additional annual honorarium of \$4,000 and committee chairs receive an additional \$2,000 annually. Industry directors do not receive compensation from OBSI.

Director Attendance

There were no changes to the composition of the Board in 2008.

There were six meetings of the Board in 2008 and the attendance of each director was as follows:

	Meetings
Dr. Peggy-Anne Brown	6/6
Adrian Burns	5/6
Leonard G. Flett	6/6
Daniel Gallivan	6/6
James Savary	6/6
Denise Verreault	5/6
Daniel Brintnell	4/6
Wendy Hannam	5/6
Ed Legzdins	4/6

reference

Focus Group Plan
Jan/Suez 2008
Trans/Fri/Mon

DESIGN LANGUAGE



Following an extensive consultation with stakeholders, OBSI's Board of Directors unanimously approved a revised Terms of Reference to guide our dispute resolution service. The target implementation date of the revised Terms is April 1, 2009.

The revisions were the first significant changes to OBSI's mandate since 2002 when our service was expanded to include the investment industry organizations and firms.

Most of the changes were made to ensure OBSI met the guidelines in the Framework for Collaboration, a document which sets out the principles and expectations of dispute resolution with the Joint Forum of Regulators and Finance Canada. Some of the changes were also suggested by OBSI's independent review completed last year. Others reflect evolving case management practices in dispute resolution.

Two of the more notable changes are in systemic issues and new complaint-handling procedures.

On systemic issues, the Terms now have a provision under which OBSI will be following up on potential systemic issues that arise out of individual complaint files by contacting the firm and asking it to undertake an investigation. Should a systemic issue be found, OBSI will offer to work with the firm to arrange compensation for affected clients and to fix the problem. If there is disagreement between OBSI and the firm on the nature of problem, or the remedy, the file will be referred to the appropriate regulator for review. Future Annual Reviews will also include reporting, on a no-names basis, of systemic issues.

On new complaint-handling procedures, consumers will have the option of bringing their complaint to OBSI 90 days after they start the firm's internal complaints process. This is consistent with the new investment sector complaint-handling rules from IIROC and MFDA that are meant to streamline the process and ensure consumers are aware of their options.

Other changes include provision for firm and client agreements to suspend limitation periods while OBSI is considering a complaint; improved communication to consumers about the dispute resolution process; and clarification of OBSI's compensation limit of \$350,000.



report

A non-profit corporation, OBSI is funded by a levy on its participating firms according to a formula established in 2002. Each sector is billed a percentage of the operating costs of OBSI based on a rolling average of its investigation caseload.

In 2008 OBSI expenditures were \$4,781,586 with the largest part, \$3,718,736, spent on personnel costs such as salaries, benefits, staff development, staff travel and recruitment. Administration expenses such as rent, information technology and communications were \$585,728 and governance expenditures were \$273,261. A total of \$203,861 was spent on public affairs and case management expenses.

Revenues last year were \$5,083,963 which included the final return of funds from the wind-up of the Centre for Financial Services OmbudsNetwork.

The Board of Directors has approved a 2009 budget which includes a 19% increase in expenditures to allow the service to handle a significantly increased workload over the last two years. The number of cases received has increased more than 100% since 2006, and added resources are needed if service levels are to be maintained and improved. The 2009 budget is projecting expenditures of \$5,803,739.

Our full Terms of Reference and guides for both consumers and participating firms are available on our website at www.obsi.ca.

information



Language Services

About a year ago, we launched a pilot project to extend our call centre language capabilities from English and French to about 170 more languages... and we're not kidding.

We signed up to an international telephone-based service that allows us to connect a phone call we've received from someone who doesn't speak French or English to an interpreter, literally in seconds. The interpreter helps us understand the nature of the inquiry or complaint and makes sure the client can comprehend our messages too.

Over the past year, we've used the language service with callers speaking Mandarin, Russian, Romanian, Cantonese and German among others. While we can't offer to do a full case review or investigation in other than French or English, the interpreters help us explain to clients how OBSI works and point them to community resources where they can get language help.

It's a reflection of our diverse population that the service has been put to good use. We expect that as our complaint volumes grow, so will our need for it.

Financial Services OmbudsNetwork (FSON)

OBSI is one of three independent dispute resolution services that make up the Financial Services OmbudsNetwork. The two insurance services are the Canadian Life and Health Insurance OmbudService for life and health insurance and the General Insurance OmbudService for auto, home and business insurance.

Canadian Life and Health Insurance OmbudService (CLHIO)

Tel: 1-888-295-8112
Fax: 416-777-9750
Email: information@clhio.ca
Website: www.clhio.ca

General Insurance OmbudService (GIO)

Tel: 1-877-225-0446
Fax: 416-299-4261
Email: info@giocanada.org
Website: www.giocanada.org

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Toronto, ON M5C 2B8

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