OMBUDSMAN
for Banking Services
and Investments

Annual Report 2002

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The Ombudsman for Banking Services and Investments (OBSI) is an organization independent of government and the financial services industry that investigates unresolved complaints from customers about banks and other deposit-taking organizations, investment dealers, mutual fund dealers and mutual fund companies.

First established in 1996, we have worked to provide prompt and impartial resolution of complaints that clients have been unable to resolve satisfactorily with their financial services provider. We deal with complaints from individuals as well as from small business.

There is no cost to the customer for our services.

The Ombudsman is independent of the financial services industry and the final decision on the fair resolution of complaints rests solely with the Ombudsman.

We base our assessment of a customer complaint on four basic criteria:
- Overall fairness
- Good business practices
- Accepted industry standards and practices
- Standards established by industry regulatory bodies, professional associations or the individual financial services provider

Please visit our website at www.obsi.ca

OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS: KEY EVENTS

July 1996
Canadian Banking Ombudsman (CBO) begins operations as an independent organization to investigate unresolved complaints from small business customers of nine banks.

1997
Membership grows to 12 banks and the CBO mandate is extended to include bank retail customers, including the clients of bank investment dealers, mutual fund and insurance subsidiaries.

Independence of the Ombudsman strengthened with Bylaw changes that require a majority of the Board of Directors to be independent of the industry and the Chair of the Board to be an independent director.

1998
The federal Task Force on the Future of the Canadian Financial Services Sector (MacKay Task Force) endorses the concept of a single financial services Ombudsman independent of government and the financial services industry.

2000
Membership increases to 13 banks.

2002
CBO merges with the ombudsman services under development by the associations representing 450 investment dealers, mutual fund dealers and investment fund companies.

These additions bring total membership to approximately 500 financial services providers, including the foreign-owned banks and most trust and loan companies.

The name is changed to Ombudsman for Banking Services and Investments to reflect the wider mandate.

OUR PRINCIPLES AND VALUES

All of our activities and work are guided by our principles and values, which include:

An overriding commitment to excellence,

Providing responsive service based on fairness, integrity, equity and respect,

Maintaining our independence from member financial services providers,

Upholding the highest standards of excellence in both our decision-making process and in the timely delivery of our recommendations,

Communicating our recommendations thoughtfully, thereby promoting greater understanding, and

Nurturing career growth and professionalism among our staff.

MESSAGE FROM THE CHAIR OF THE BOARD OF DIRECTORS

Peggy-Anne Brown
President
Brown Crawshaw Inc.
Vancouver

"A year of significant expansion of our mandate"

The past year has been one of the more eventful in our seven-year history as we merged our dispute resolution services with those of the investment and mutual fund dealers and mutual fund firms across Canada. To reflect this wider mandate we are now the Ombudsman for Banking Services and Investments (OBSI).

This marks another positive step in our evolution as an organization operating at arms-length from government and the financial services industry, where customers can get one-stop access to free, fair and independent assessment and investigation of complaints for a significant portion of the financial services industry.

Since we were first established in 1996 as the Canadian Banking Ombudsman, our membership and mandate have continuously evolved. Throughout this evolution, our members have ensured we were appropriately funded to meet our growing responsibilities. Initially, we handled unresolved complaints from small business customers of Canada's major banks. In 1997, our mandate expanded to include bank retail customers, including the investment, insurance and retirement products offered by bank subsidiaries. Since then, our membership has grown to include trust and loan companies as well as foreign-owned banks. In 2002 we also welcomed our first credit union member.

In the fall of 2002, we took on responsibility for complaint resolution on behalf of the approximately 450 member firms of the Investment Dealers Association of Canada (IDA), the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Funds Institute of Canada (IFIC).

I am pleased that Michael Lauber, who has been Ombudsman since our inception, has taken on the expanded role and mandate. The extensive experience of Michael and his staff in handling client disputes related to the bank-owned securities firms and mutual fund business units provides a strong foundation for these new responsibilities.

The establishment of the OBSI is consistent with the position we took throughout the federal government's four-year financial services legislative review and reform that began in 1997. In various submissions we made the case for simplified one-stop access for consumer complaint handling via a private sector voluntary organization that would include banks and other deposit-taking organizations as well as the investment industry.

With the trend towards more financial services providers selling competitors' products, customers should have the assurance that complaints will be handled in a similar fashion regardless of the firm where the products or services were purchased or where the firm operates.

Customers of financial services providers now have access to three industry-specific dispute resolution organizations to deal with unresolved complaints as part of the Financial Services OmbudsNetwork. In addition to the OBSI, insurance matters are handled by two newly-created organizations: the Canadian Life and Health Insurance OmbudService and the General Insurance OmbudService.

The three organizations are linked by the Centre for the Financial Services OmbudsNetwork (CFSON), which operates a consumer assistance centre and referral service.

The change in our membership required a restructuring of our Board of Directors and a change in our Bylaws to ensure the continued independence of the Ombudsman and to provide for representation from our new membership. We have expanded the size of the Board to 14 members from 11, with eight independent directors and six directors representing the financial services industry (two each from the banking, investment dealers and mutual fund industries).

We take great care to protect the independence of the Ombudsman and his staff in their handling of disputes. Part of that protection includes requiring a majority of directors to be independent of the industry.

In addition, a committee of the Board is reviewing the OBSI's Terms of Reference to ensure they address the issues of our expanded mandate and reflect the experience gained in our seven years of operation. I invite you to review the Governance section at the end of this report for more details.

Let me take this opportunity to thank Board members for their support during this period of significant change and for their continuing commitment to the fundamental underlying principle of our organization: the belief that consumers deserve fair resolution of their complaints and that the financial services industry is stronger as a result of the ombudsman process.

Special thanks to Michael Lauber, his Deputies and the OBSI staff for their hard work and dedication to making this principle a reality.

Dr. Peggy-Anne Brown
Chair of the Board of Directors

MESSAGE FROM THE OMBUDSMAN

Michael Lauber
Ombudsman

"Building and maintaining trust in the ombudsman process"

In the seven years since we began operations as the first financial services Ombudsman in Canada, our success has been based on both parties to the dispute trusting that we will be fair, balanced and independent in our handling of the matter.

The major expansion of our membership base in 2002 to include members of the Investment Dealers Association of Canada (IDA), the Mutual Fund Dealers Association (MFDA) and the Investment Funds Institute of Canada (IFIC) requires us to place renewed emphasis on the communications necessary to build and maintain that trust.

Prior to the expansion of our mandate in 2002, we had 13 members, including the large banks and their investment dealer subsidiaries. These members represented more than 80 per cent of retail equity trading and more than 60 per cent of mutual fund sales in Canada. Taking on responsibility for most of the balance of that market has added more than 450 new members, bringing with it added complexity in carrying out our responsibilities.

Most of our new members are small relative to the large banks and their investment dealer subsidiaries. Most have little or no experience with the Ombudsman dispute resolution process.

For the Ombudsman to succeed, it is critical that our members understand and embrace the ombudsman process. In partnership with the IDA, MFDA and IFIC, we have begun a significant effort to reach out to our new members, to develop a good understanding of the Ombudsman process and to build and maintain their confidence and their support.

We are distributing information packages to new member firms describing our process and I have traveled across Canada delivering presentations and meeting with senior management of new member firms. I am pleased to report the response has been positive and supportive and we look forward to a healthy working relationship with our new members.

Throughout all these changes, we have not lost sight of the most important person, the consumer. We have developed information material for clients of member firms and we have conducted media interviews about our expanded mandate to raise awareness among the general public. Copies of our new brochure have been distributed to all Members of Parliament and members of provincial legislatures to be available for their constituents. In the coming year we will be putting more emphasis on consumer communication and public awareness.

Our message to members and to the public remains as simple and straightforward as it always has been: customer complaints are inevitable and they are best handled by the firm itself. Good complaint handling makes for stronger customer relationships. In particular, we emphasize the importance of prompt and responsive handling of a complaint in its early stages to avoid ill will that can linger throughout the resolution process.

Our members are usually successful in resolving complaints using their own internal processes and relatively few complaints are escalated to our office. They are usually the toughest and most complex, often involving disagreements about the facts of the dispute.

Last year we received 2,246 customer inquiries through phone calls, letters and emails, a 47-per-cent increase from 2001, and double the levels of 2000, an indication that public awareness of our office has risen. Most who contact us are seeking advice on resolving a problem and most are referred back to their financial services provider. Formal investigations were launched in 182 cases, up only slightly from 170 in 2001. We found in favour of the client in 19 per cent of cases, making recommendations for adjustments or compensation. In another five per cent of cases, we recommended modest adjustments to compensate for inconvenience.

Members of the OBSI are not bound by our recommendations. However, we are required to make public any case where a member has failed to accept our recommendation on behalf of a customer. To date, all of our recommendations have been accepted by members, a sign of their confidence in the fairness of the Ombudsman process.

The system is working for customers as well. A survey in 2001 by the Financial Consumer Agency of Canada (FCAC) found that 92 per cent of consumers had never had a serious problem with their financial services provider. Among those who had a problem, 70 per cent reported it had been resolved fully or partially.

Another measure of the success of the Ombudsman process is the fact that of the billions of financial services transactions each year, relatively few complaints escalate to our office.

In a perfect world, we would not receive any complaints at all. In the meantime, we will continue to do our best to be prompt, fair and impartial in handling those we do.

In conclusion, I wish to express my thanks to Board Chair Dr. Peggy-Anne Brown, our Board and to OBSI staff for their unfailing support during a year of significant transformation for our organization.

Michael Lauber
Ombudsman

HOW THE OMBUDSMAN PROCESS WORKS

Individual or small business customers not satisfied with a financial product or service have a right to make a complaint and to seek resolution of the problem.

The process starts with the local branch or office of the financial services provider where the transaction occurred. Most problems can be resolved at that level. If a complaint is not settled at the point of sale, all members of the Ombudsman for Banking Services and Investments (OBSI) have an additional dispute resolution process to help resolve the matter.

Member firms have client brochures describing the process. The OBSI has approximately 500 members, including banks, trust and loan companies and other deposit-taking institutions, investment dealers, mutual fund dealers and mutual fund firms. A complete list of member firms is on our website at www.obsi.ca.

Larger organizations often have customer satisfaction groups responsible for complaint-handling as well as a full-time internal Ombudsman who reports to the CEO. All financial services firms have a compliance officer, or compliance group, with responsibility for handling client complaints. Some firms also have a designated senior executive responsible for dispute resolution.

If a customer has not been successful in resolving a complaint using the internal process of their financial services provider, the customer can request the assistance of the OBSI.

There is no charge for our service and our mandate enables us to investigate a wide range of issues relating to products and services. Although we have the ability to make recommendations to members on the resolution of a complaint, we also use mediation to find a solution acceptable to both parties.

However, there are some complaints we do not investigate because they are competitive issues best resolved in the marketplace:

- complaints about the general pricing of products and services, including the pricing of fees, commissions and other charges applicable to clients;
- complaints about the level of interest rates;
- issues related to general industry policies or procedures; and,
- credit-granting policies or other risk management policies or procedures of members.

The OBSI also does not handle matters that are currently before a court or an arbitration body or other dispute resolution process. Nor will we deal with matters that have been through any of those processes.

Clients retain their legal rights and are free to further pursue the matter in court if they are not satisfied with the OBSI decision. Clients also have the option of pursuing the binding arbitration process offered for member firms of the Investment Dealers Association of Canada.

However, if a customer decides to go to court or arbitration first, the option of bringing the matter to the OBSI is not available since both of those processes are final and binding.

THE COMPLAINT PROCESS

Customers who have a complaint should first talk with their account manager or the person they originally dealt with to explain the problem.

If the issue is complicated, it's usually best to communicate a complaint in writing, and some organizations may require it. Customers should ensure they have all the appropriate documents, including brochures, mailed statements and copies of contracts.

If a complaint is not resolved at this stage, customers should be provided with information on their financial services provider's complaint escalation process and they should follow it.

Once all avenues of appeal have been exhausted within the firm, customers who have not received satisfaction can take their case to the OBSI.

BRINGING A COMPLAINT TO THE OBSI

We ask the client to set out the complaint in a letter. The letter should summarize the nature of the complaint and indicate a proposed resolution. We also ask for copies of all previous correspondence concerning the complaint between the client and the financial services provider as well as copies of related documents and notes of conversations.

The OBSI has a general guideline that customers must bring complaints to us within six months of completing the process at their financial services provider.

Clients are required to sign a plain language agreement between the client, the financial services provider, the Ombudsman and any other parties involved in the dispute. It describes the process and authorizes the financial services provider to send us files related to the complaint. If the client is disabled or requires the assistance of a family member, friend or other person, we ask the client to sign a form allowing us to discuss confidential matters with a third party.

To encourage cooperation and openness, we ask all parties to agree that our files and our work product and anything generated as part of the dispute resolution process may not be

used in any subsequent legal or regulatory proceedings.

The parties must also agree that the Ombudsman and staff and advisors will not be called to testify.

Most cases involve a formal investigation and the customer receives a detailed written response that includes our findings and any recommendations we make. More than 80 per cent of files are closed within 90 days. Very complex cases can take longer to resolve.

We make our findings about a case based on overall fairness and good business practices. We also take into account accepted industry standards and practices as well as any standards established by industry regulatory bodies, professional associations or the individual financial services provider where the client does business.

The ceiling on the amount of compensation the Ombudsman can recommend is $350,000.

In recent years, the Ombudsman has made a recommendation in favour of the client in about 15-20 per cent of the cases investigated. In another 10 per cent of cases, there has been a recommendation for small adjustments to compensate clients for poor service or for significant inconvenience.

This percentage is relatively low and has been declining in recent years. We regard this as an indication that complaint handling processes in the industry, which include the internal Ombudsman, are working well. It's important to remember that by the time the complaint is investigated by the OBSI, it has already been reviewed at several stages within the member organization. In the banks and some other large firms, the existence of the Ombudsman process puts pressure on business units and complaint-handling specialists to be more responsive to customer concerns and to resolve them so they don't end up in our office.

The result is that a smaller proportion of complaints escalate. And those that do are the most complex, often involving unusual situations or disputes over facts.

The process is not binding upon the customer or the financial services provider. However, member companies who do not agree to a recommendation by the Ombudsman will be publicly reported. To date no member has failed to follow the Ombudsman's recommendation.

FINANCIAL SERVICES OMBUDSNETWORK

The OBSI is one of three independent, industry-specific complaint-handling services that make up the Financial Services OmbudsNetwork. The OmbudsNetwork also includes the Canadian Life and Health Insurance OmbudService, which provides services to clients with complaints related to life and health insurance companies, and the General Insurance OmbudService, which handles complaints from customers of property and casualty insurance companies, including home, auto and business insurance.

The three industry Ombudservices are linked by the Centre for the Financial Services OmbudsNetwork (CFSON) which operates a customer assistance centre. The CFSON can provide assistance to customers uncertain about where or how to resolve a dispute with their financial services provider.

OUR PRIVACY POLICY: HOW WE PROTECT YOUR PERSONAL INFORMATION

The Ombudsman for Banking Services and Investments (OBSI) is committed to ensuring that personal information in our possession remains confidential, secure and accurate.

With the consent of the customer, we collect personal information from the financial services provider, the customer and other sources to facilitate the investigation and resolution of the complaint. We will only use the information for the purposes intended.

We regard our communication to clients as confidential. As a matter of policy, the Ombudsman will not make any public comment about any case that has been brought to our office.

We will destroy personal information in our possession when it is no longer necessary for our investigation and it is no longer legally necessary for us to have the information to respond to issues that may arise later.

Our detailed privacy policy is available on our website at www.obsi.ca

CASE STUDIES

In the following cases, names have been altered to protect the privacy of the individuals and organizations involved.

CASE 1

This case shows the importance of a bank teller ensuring that the bank does not accept improper deposits. In this instance, the teller allowed a customer to deposit a cheque to her account without the endorsement of a business which was a joint payee on the cheque.

CASE:

A customer received a cheque for $2,000 from her insurance company for payment of repairs made to her automobile. The cheque was payable to her and to an auto-body repair shop. The customer did not endorse the cheque over to the auto-body shop but instead deposited it to a bank account that she held jointly with her ex-husband. The customer was also in arrears with payments due to her ex-husband pursuant to their division of family assets.

The bank teller accepted the cheque for deposit to the joint bank account even though the auto-body repair shop had not endorsed the cheque. The customer's ex-husband, who had no knowledge of the source of the $2,000 deposit, subsequently transferred $2,000 to his personal bank account as part of the money owed to him.

The bank then attempted to collect the $2,000 from the husband because he had assets and she did not, claiming he shared responsibility as a joint account-holder.

OMBUDSMAN:

The Ombudsman recommended that the bank only pursue the customer for the $2,000. The customer's ex-husband had no involvement with the improper deposit.

CASE 2

This case illustrates the responsibility of customers to monitor account activities and to take steps immediately to mitigate possible damages if an error is discovered.

CASE:

In October 1997, a customer had $60,795 transferred from another bank to discharge a mortgage at his current bank. When the transfer was made, the funds were short by one mortgage payment. Without contacting the customer, the bank debited a bank account for the shortfall of $692. Unfortunately, the bank made the debit from an account the customer held in trust for one of his daughters.

In March 1999, the customer appeared in Family Court on another matter. He believed that the earlier unauthorized withdrawal caused the Court to take an antagonistic view towards him and to see him as negligent in his duties as trustee. The outcome of his Court appearance was that costs were imposed on him and that the trust accounts he managed for both his daughters were removed from his control. The customer sought $25,000 in compensation from the bank for his costs, loss of reputation and credibility, anxiety, stress, and estrangement from his eldest daughter.

The bank acknowledged the error and offered $4,100 to cover costs, which included $750 that the customer was ordered to pay his ex-wife for the motion, the unauthorized withdrawal of $692 and interest on the money of $158, as well as his legal costs of $2,500. The customer advised us, however, that all of his costs were not covered by the $4,100.

OMBUDSMAN:
Two main factors caused the customer's difficulties: 1) The bank erred in taking funds from a trust account; and 2) The customer erred in failing to monitor the trust account activities which would have allowed him to take action in a timely manner.

A $692 withdrawal (the only withdrawal for a number of years) from an account that held approximately $2,100 is easily noted and yet the customer did not notice the withdrawal until February 1999 at which time he replaced the funds. Enough time had lapsed for him to have responded to the bank's error well before his Court appearance.

In determining the amount that the customer should be compensated, consideration was given to the role that the customer had in the outcome of this situation. With respect to any recent legal fees, miscellaneous costs, as well as his time and inconvenience, the bank's offer of $4,100 was considered reasonable the Ombudsman and no change was recommended.

CASE 3

This case illustrates the importance that bank customers place on issues of privacy and confidentially, especially with respect to financial matters.

CASE:
On June 7, 2002 Bartholomew Smith accessed his account profile through on-line banking and discovered that he could view his own banking products as well as those of another customer. At that time he had no idea he was viewing the accounts of another Bartholomew Smith. All he knew was that his profile had been mixed with someone else's and he was concerned that if he could do banking transactions, so could the other person. Mr. Smith called two different branches to have the profiles separated and he checked regularly, calling every hour to make sure that the situation was corrected. It took a day to correct.

Mr. Smith's profile had been combined with that of another Bartholomew Smith who lived in the same building, and the bank noted it was very unusual for two customers to share the same first and last names and also live in the same apartment building. The bank assured Mr. Smith that this error was inadvertent. The bank updated his account profile to reflect sufficient personal information to identify him from any other customer with a similar name. The added precaution was taken of attaching a message to Mr. Smith's account profile prohibiting bank staff from joining his profile with another profile.

Mr. Smith believed that the privacy of his financial information had been breached and demanded $5,000 for the problems, worries, frustration and inconvenience he had experienced. The bank offered $250 to Mr. Smith as a gesture of good will and apologized for his frustration and inconvenience.

In discussing this with Mr. Smith, he told us that the other Mr. Smith, "Smith 2," had contacted him. Mr. Smith said he believed that Smith 2 had learned about this situation from the branch and Mr. Smith acknowledged that Smith 2 never told him he had looked at Mr. Smith's accounts. Mr. Smith acknowledged that he had no indication that Smith 2 had ever viewed his accounts and further, by the time Mr. Smith first met Smith 2, the combined profiles had been separated so there was no opportunity afterwards for Smith 2 to see Mr. Smith's accounts.

OMBUDSMAN:
There was no evidence that the customer's privacy had been breached and the Ombudsman considered the bank's good will offer of $250 to be reasonable.

CASE 4

This case demonstrates the obligations, responsibilities and liabilities that are attached to co-signed loan agreements and the importance of seeking independent legal advice as required.

CASE:
A retired physician in her 80's co-signed loans to support her youngest son's legal practice. When he declared bankruptcy several years later, she was liable for a debt of $135,000.

Her daughter complained on behalf of her mother who had co-signed loans for the benefit of her son Bob's legal practice. The first loan was for $75,000, but the loan document contained the account manager's hand-written note that the mother's

liability was limited to $40,000. Security of $40,000 from her $200,000 investment portfolio was provided. The bank could not locate evidence that independent legal advice had been provided to the mother.

The following year, a $30,000 loan, fully secured by the mother's investments, was taken in her name only. The loan was for the sole benefit of Bob's practice and he assumed responsibility for repayment. No information or statements were sent to the mother.

Bank officials later met at the mother's home to obtain her signature on a $135,000 consolidation loan agreement, co-signed with Bob, to cover the aforementioned loans and his other unsecured loans. Prior to this meeting, Bob had written the branch that his mother would only take on additional liability of $20,000 for this latest loan. Assets of $105,000 were pledged as security.

This time, independent legal advice was provided by a lawyer friend of Bob's who had lent him $10,000 the previous year, most of which was outstanding when Bob declared bankruptcy. The daughter (also a lawyer) claimed this conflict of interest rendered the independent legal advice invalid. This, plus the bank's failure to disclose Bob's risk assessment to the mother and the alleged undue influence under which the consolidation loan was signed, caused the daughter to conclude that the entire debt should be forgiven.

OMBUDSMAN:

Despite the mother's age, she was not frail in terms of mental acuity and was fully aware of what she signed and its purpose. There was ample evidence, both from bank records and from the daughter, of the mother's long history of financial largesse towards Bob.

The lack of independent legal advice on the first loan, while unacceptable, was considered a moot point because independent legal advice was subsequently obtained on the final consolidating loan. The bank was not responsible for ensuring that the lawyer who provided such independent legal advice had no conflict of interest (other than with the bank). Further, if the bank had volunteered Bob's financial information to the mother, it would have breached Bob's privacy.

The Ombudsman questioned the bank's motivation for taking more security from the mother and for consolidating Bob's unsecured debts with the loans that she had already signed and secured. Bob's law practice was also the bank's customer and the bank was fully aware of his precarious financial position. It was also clear from the bank records that the mother intended to limit her liability to $90,000. Finally, based on past actions, there was some question whether anything the bank might have done would have prevented the mother from signing and securing these loans.

The Ombudsman concluded that the outstanding debt of $135,000 should be shared equally between the mother and bank and both the bank and the mother accepted this.

CASE 5

This case demonstrates the need to be vigilant when undertaking financial obligations on behalf of friends or family members.

CASE:

The customer's nephew was in financial difficulty. At the nephew's urging, the customer agreed, after some soul-searching, to co-sign a loan for his nephew, who promised to make the payments. The nephew pledged his automobiles to the bank as security for the loan. In an unusual twist, the banker agreed (contrary to bank policy and contrary to the loan agreement that made the customer and nephew jointly and severally responsible for repayment) to pursue the nephew first should the loan go into arrears.

Some 18 months later, the customer inquired with the bank and learned that his nephew's loan was in arrears. The bank agreed to seize the automobiles, but failed to do so. A few months later it demanded repayment of the full outstanding balance from the customer. The bank sued both the customer and the nephew. Shortly thereafter, the nephew declared personal bankruptcy.

OMBUDSMAN:

The customer's obligation to repay the loan he co-signed was real and legitimate. However, once it was confirmed that the bank had led the customer to believe that it would exercise all its remedies against the nephew before pursuing the customer, the Ombudsman required the bank to do so. Given the nephew's bankruptcy, the only source of recovery from him was the automobiles. The Ombudsman

recommended that the bank limit the amount it attempted to recover from the customer to the balance of the outstanding loan, net of the estimated value of the automobiles that the bank should have seized and sold. The bank and the customer accepted the recommendation

CASE 6

This case demonstrates that clients who incur losses in investment transactions have a responsibility to mitigate such losses.

CASE:

The client received advice from his accountant about the best method of structuring a series of investment and estate planning transactions. The client asked the bank's investment advisor whether the advisor could execute these transactions on his behalf, and the advisor said that he could. Unfortunately, the investment advisor made errors and the client wound up owning thousands of shares of Nortel and BCE stock that, under the plan, should have been sold and retained as cash. The client held onto the stock, some of which was highly volatile, and subsequently sought compensation for his losses when the value of the stock declined dramatically.

OMBUDSMAN:

The Ombudsman confirmed that the bank's investment advisor had made errors that caused the client financial loss. The question then was what portion of the client's loss was the bank's responsibility. The bank was found to be responsible for the full losses for the initial period during which the client was unaware of the errors. However, during the following period, in the context of daily decreases in the stock price, the client did not advance his claim in a timely manner, nor did the bank deal with it efficiently or seriously. The loss for this period was divided equally between the client and the bank. Finally, as of a specific subsequent date, the client was well aware that the stock was in a downward spiral, that his losses were continuing to mount, and that the bank had declined responsibility for the problem. At that time, the client made an investment decision to hold the stock in the hope of a recovery, which did not occur.

Clients have a duty to mitigate their losses—to take reasonable steps to limit losses—even when they believe the cause of the loss is the error or misconduct of the investment advisor. In this case, the client had failed to mitigate his losses and so the compensation due to him from the bank included his losses only up to that specific subsequent date. The Ombudsman recommended that the bank compensate the client accordingly, in a sum approaching $80,000.

CASE 7

This case illustrates the client's responsibility when signing investment account-opening documents and the agreed-upon risk tolerance.

CASE:

This client of a full-service investment dealer conducted more than 200 trades in an eight-month period. The client then moved his account, claiming that he had suffered losses as a result of the advisor "churning" his account (i.e., excessive trading to maximize commissions) and that the stocks bought and sold were overly concentrated in the volatile high tech sector.

OMBUDSMAN:

A review of the trading activity showed that indeed the account was frequently traded and highly concentrated in the high tech and resource sectors. However, documents showed that at least one-half of the trades were initiated by the client and that the balance, recommendations by the advisor, were agreed to by the client (there was no discretionary trading by the advisor). Further, there was no evidence of trading done solely to generate commissions.

With regard to the high concentration of high tech and similar stocks in the account, the client had signed account-opening documents in which he indicated a desire for 100% high-risk investments. Further, based on the nature of the stocks transferred into his account, this appeared to be a continuation of his previous trading pattern at another investment firm.

The Ombudsman concluded that this client received the very service that he requested, and there was no basis on which to ask the firm to compensate him.

CASE 8

This case illustrates the importance of careful and detailed analysis when making life decisions with significant financial implications. In this case, retirement funds that had been anticipated by the customer were not available because of inadequate analysis and poor communication by bank advisors.

CASE:

At age 53, with a wife and 12-year old son dependent on him for support, the customer was anxious to retire after some 30 years with his employer. His salary was about $85,000. He approached his trusted, long-time account manager with the company's severance package offer, seeking advice on whether it would be sufficient to live on. The account manager assisted him in preparing a budget for the family totaling $3,500 to $4,000 monthly, and it was agreed they would have to reduce their spending in order to live on that amount. The account manager arranged a meeting with one of the bank's Investment Specialists, since this was his area of expertise.

At the meeting, discussion centred on historical stock market returns going back to 1930. The customer left feeling confident that he could live comfortably with the income this investment would generate, and that it would likely exceed the indexed $37,500 company pension plan he would be eligible for in two years if he had continued to work. The investment advisor kept scant notes of the meeting and the customer kept none. The bankers provided no written follow up advice or confirmation of what had transpired at the meeting. The customer took the severance package and retired.

Two months later when he received the severance package funds he met again with the investment advisor. This time the customer was provided charts showing withdrawal amounts of $20,000 to $49,000 based on growth rates ranging from 4 to 11% for the locked-in portion ($400,000) of the severance package. There was some discussion about how the customer could calculate the amount he could actually withdraw from locked-in plans like his according to government LIF (Life Income Fund) regulations, but again the customer was not provided with charts showing that calculation.

For the next two years the plan was for the customer and his family to live on funds from the package that were not in registered plans and from pre-existing RRSPs, with the idea that his locked-in pension funds would increase during that time until conversion to a LIF at age 55. The investment portfolio performed very well during that period.

It was then that the customer was shocked to learn that government regulations limited the allowable LIF withdrawals to approximately 6% of the value of the LIF, or some $26,000 annually, rather than the $35,000 to $40,000 he had expected. It did not matter how much the investments earned, he could only withdraw the allowable upper limit each year. This created a serious cash-flow problem for the first ten years or so after retirement.

OMBUDSMAN:

We were somewhat surprised the customer would make such a major life-decision based on two meetings, one with his account manager and the other with the bank's investment specialist, with nothing in writing and no specifics about locked-in pension funds. Nonetheless we drew the conclusion that the bank representatives had a duty of care to ensure the customer was provided with sufficient information and guidance to enable him to make an informed decision. We accepted the customer's assertion that, if the bank had properly informed him of the limitations in the amount of income he could withdraw from the LIF, he would have worked the additional two years to become eligible for his company pension rather than resign.

Therefore our focus was on how to "make him whole" over the short term, until the value of his portfolio increased sufficiently to generate allowable LIF withdrawal amounts equal to or greater than the amount his company pension would have paid.

We retained an independent actuarial firm to assist us in assessing the difference in value between the severance package the customer received and the indexed pension benefit he would have been entitled to at retirement including continuing health and dental benefits. Based on the actuary's report, we determined that the payment of $135,000 would put the customer in the position he would have been in had he retired with the pension. The actuary agreed that it was a fair settlement in the circumstances.

The bank accepted our $135,000 recommendation, but the customer declined and is contemplating taking legal action against the bank.

CASE 9

This case demonstrates the importance of referring to the mortgage contract before paying a penalty or fee. Further, a customer inquiring about the amount of the penalty to be paid in the event of early repayment or transfer of the mortgage, should always confirm whether the penalty is subject to change depending on rate fluctuations.

CASE:

Dissatisfied with the services offered by their bank, the customers considered transferring their mortgage to another financial institution before the mortgage reached maturity. Before doing so, they contacted their bank to find out the amount of the penalty that they would have to pay. The bank representative informed them that the penalty would be $1,023.19, but did not mention that this amount was subject to fluctuations depending on interest rates in effect on the date of transfer.

A few months later, the customers decided to transfer their mortgage and were astonished to discover that the penalty was now $5,400 as a result of the fluctuation in interest rates over the past few months. Although the customers had already incurred fees of close to $1,000 to transfer their mortgage, they could not continue with the transfer because of the large penalty they would have to pay.

The customers offered to pay the bank the original sum of $1,023.19, but refused to pay the difference because they were never told that the amount of the penalty could change. The bank refused their offer but offered them new financing terms and also offered to reimburse the fees they had already incurred. The customers refused this offer. The bank then agreed to reduce the penalty to $4,400 (a reduction of $1,000) but the customers refused this as well.

When examining the mortgage contract between the bank and the customers, we discovered that there was no mention of any penalty clause in case of early repayment. The documents signed by both parties even implied that the customers could repay their mortgage at any time, without penalty.

OMBUDSMAN:

The Ombudsman concluded that the customers could transfer their mortgage without penalty and that the bank, in the circumstances, would absorb the fees related to the transfer. In this instance, the bank had tried to charge a penalty fee that was not a provision in the mortgage document.

CASE 10

This case illustrates that merchants must be diligent in accepting credit card payment for goods and also understand the terms and conditions of the Merchant Agreement.

CASE:

The merchant received an e-mail inquiry from a previously unknown source in Uzbekistan. The merchant had no idea why his small town computer store was contacted for these computer products, but he appreciated the surge in business. The purchaser's e-mail provided 11 different credit card numbers and expiry dates for what were supposedly corporate credit cards. No names were included, but there were instructions to "split payment equally between credit cards, and if there is a problem with one card, charge a lower amount or use another card number."

Over a 20-day period the merchant made 23 requests to the credit card company for authorization of payment, 10 of which were rejected. The amounts ranged from $1,500 to $5,000. After receiving authorization from his credit card company, the merchant shipped three orders totaling $45,000. It turned out the cards had been used fraudulently by the Uzbekistan purchaser and the American owners of the cards disputed the charges. The merchant believed that because he obtained the card company's authorization of payment, he should receive payment from the credit card company.

OMBUDSMAN:

In this case, the card Merchant Agreement was breached when the merchant processed transactions without a card present to authenticate the authorized cardholder, and by using multiple sales drafts to complete a sale (split ticketing). The merchant was therefore liable for all charge-back amounts. The merchant's suspicions should have been aroused when suddenly, from an unknown, overseas source he received this increase in business involving multiple cards and multiple attempts and declines for payment authorization.

Furthermore, receipt of an authorization of payment from the card company is no guarantee that the amounts will not be charged back to the merchant. It guarantees sufficient funds are available on the card, but does not confirm that the transaction is authorized by the cardholder.

COMMENTS ON THE STATISTICAL SUMMARY FOR THE YEAR

Although there was a significant increase in the number of individuals and small businesses contacting our office with inquiries and complaints in 2002, the number of formal investigations launched was up only slightly. A total of 2,246 complaints and inquiries were received, a 47-per-cent increase from 2001. We launched 182 investigations, compared with 170 in 2001.

Inquiries and complaints to our office have nearly doubled since 2000, partly a reflection of our higher public profile. The fact the number of formal investigations launched has been relatively flat in recent years suggests our members have been successful in resolving complaints within their organizations.

About half of the inquiries and complaints come to us by telephone, with the balance coming by letter, fax and e-mail. Many customers simply want to discuss their case with someone knowledgeable and impartial, to get advice on whether to pursue a complaint and to seek information on how to go about it. If a customer has not completed the complaint review process at their financial services provider, they are directed back to the appropriate person within that firm.

STATISTICAL OVERVIEW FOR THE YEAR ENDED OCTOBER 31, 2002

	OBSI	
	Personal	Small business
COMPLAINTS AND INQUIRIES RECEIVED	**2,066**	**180**
COMPLAINTS RESULTING IN INVESTIGATIONS	**155**	**27**
THE NATURE OF THE COMPLAINTS WERE AS FOLLOWS:		
Account and transactions	20%	33%
Card services	15%	22%
Fees and charges	7%	4%
Credit - new or changed terms	3%	19%
Credit - collections	14%	4%
Privacy and confidentiality	1%	0%
Service and advice	10%	4%
Tied selling	0%	0%
Other selling practices	0%	4%
Other	29%	11%
	100%	100%
INVESTIGATIONS CONCLUDED IN THE PERIOD	**148**	**30**
THE RESULT OF THE OBSI'S REVIEW WAS:		
We recommended that the bank take action in favour of the customer, which was followed in each case	19%	17%
We recommended modest adjustments to the bank's offer	5%	0%
We found the bank's action appropriate in the circumstance	76%	83%
OMBUDSMAN'S ASSESSMENT OF COMPLAINANTS REACTION*:		
Agreement was reached	29%	30%
Partial resolution of the complaint was achieved	7%	0%
No agreement reached	64%	70%

Note: Figures for the Bank Ombudsmen are compiled from information provided by them

After completing our investigations in 2002, we recommended the bank take substantial action in favour of the client in about one case in five, compared to about one in six in 2001. In another five per cent of cases, we recommended a modest adjustment to compensate the customer for poor service or inconvenience, down slightly from seven per cent the previous year. Our recommendations are not binding, but they have been followed by our members in every case since we were established in 1996.

	Individual Bank Ombudsmen	
	Personal	Small business
	2,137	**180**
	18%	28%
	32%	5%
	5%	7%
	11%	14%
	13%	27%
	3%	1%
	14%	13%
	0%	0%
	1%	0%
	5%	6%
	100%	100%
	2,007	**173**
	(not applicable)	
	53%	31%
	12%	18%
	35%	51%

COMPLAINTS TO THE OBSI IN THE PERIOD WERE FROM CUSTOMERS OF THE FOLLOWING BANKS:

	Personal	Small business
Amex Bank of Canada	8	1
BMO Financial Group	20	6
Canadian Imperial Bank of Commerce	39	5
Citibank Canada	3	0
HSBC Bank Canada	2	0
ING Bank of Canada	1	0
Laurentian Bank of Canada	9	1
MBNA Canada Bank	1	0
National Bank of Canada	15	3
RBC Financial Group	10	1
Scotiabank	13	2
TD Bank Financial Group	34	8
	155	**27**

EXPLANATORY NOTES TO REPORT ON ACTIVITIES

*** Assessment categories:**

Areement was reached - the bank and the customer are substantially in agreement.

Partial resolution of the complaint was achieved - the bank and customer have modified their positions or there is a clearer understanding and acceptance of the position.

No agreement was reached - no substantial change in the bank's or the customer's position nor an explanation which met the customer's expectation.

GOVERNANCE OF THE OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS

The Ombudsman for Banking Services and Investments is a not-for-profit corporation funded by its members, which now total about 500 financial services providers.

To protect the office's independence, the Ombudsman is responsible to a 14-member Board of Directors which includes a majority of eight independent directors who are not affiliated with the financial services industry. To reflect the new expanded mandate, the Board was restructured in 2002 to replace some representatives of the banks with representatives from the investment industry and add two additional independent directors.

Directors normally are elected for three-year terms and can be re-elected. Terms are staggered to ensure Board continuity and gradual turnover.

The eight independent directors act as a committee of the Board and have special powers to safeguard the independence of the Ombudsman. They review and recommend candidates for Ombudsman, act as the nominating committee putting forward names for independent directors, review and recommend the budget to the Board, and must form the majority of committees of the Board.

THE OMBUDSMAN'S OFFICE

The Ombudsman is appointed by the Board of Directors, on the recommendation of the Independent Directors' Committee, for a term of up to five years, and may be reappointed. The Ombudsman cannot have been a government employee or have worked for or been closely associated with a participating financial services provider for five years prior to appointment.

The Ombudsman can be removed for cause by vote of 75% of the Board, provided the vote includes a majority of the independent directors.

While responsible to the Board, the Ombudsman does not solicit the advice of directors on specific complaints. The final decision concerning complaints rests with the Ombudsman. There is no appeal to the Board on Ombudsman decisions, nor can the Board influence the decisions of the Ombudsman.

However, the Board does establish and monitor OBSI standards for complaint handling. The Board also deals with complaints customers might have about the *process* of complaint handling within the OBSI.

MEMBERSHIP

The directors of the Corporation are its voting members. Non-voting membership is available to all financial services providers that are regulated by a recognized federal or provincial regulator as well as to industry associations representing these firms. The Board of Directors may also accept a non-regulated financial services provider as a member.

Current participating members include:

- Domestic and foreign-owned banks
- Investment Dealers Association (IDA) and member firms
- Mutual Fund Dealers Association (MFDA) and member firms
- Investment Funds Institute of Canada (IFIC) and member companies
- Most independent trust and loan companies and other deposit-taking organizations

Some OBSI members may be members of more than one of the above organizations.

COMPOSITION OF THE BOARD

The eight independent directors are chosen to reflect Canada's geographic and demographic diversity and are selected as individuals who are known and respected on a regional or national basis.

The other six members of the Board come from the financial services industry and are appointed by the OBSI member associations. The Canadian Bankers Association and the Investment Dealers Association each name two directors to the Board. The Mutual Fund Dealers Association and the Investment Funds Institute of Canada each name one.

BOARD OF DIRECTORS *

Independent Directors:

Peggy-Anne Brown
(Chair)
President & Co-owner
Brown Crawshaw Inc.
Vancouver
Brown Crawshaw is a Vancouver-based firm specializing in employee and family assistance programming, critical incident response and wellness training. Dr. Brown, a psychologist, also maintains a clinical practice counseling senior business leaders and their families.

The Hon. Lincoln Alexander
Chancellor
of the University of Guelph
Hamilton
A former Lieutenant Governor of Ontario and former Chairman of the Canadian Race Relations Foundation of Canada, the Honourable Lincoln Alexander is currently Chancellor, University of Guelph.

Beverley A. Brennan
Corporate Director
and Consultant
Edmonton
Ms. Brennan consults in the areas of governance and strategic planning. She is a former Chair of the Canadian Institute of Chartered Accountants, and the former Vice-President Finance of Philom Bios Inc., an agbiotech company in Saskatoon.

Gilles G. Cloutier
Consultant
Montreal
Dr. Cloutier is a consultant in the field of science and technology. He has been a member of many distinguished scientific bodies and on the board of several scientific and corporate organizations. He is a former Rector of the Université de Montréal and is a Companion of the Order of Canada.

Len G. Flett
Vice-President,
Store Development
& Public Affairss
The North West Company
Winnipeg
Mr. Flett is an executive with The North West Company, the leading retailer in northern markets. He is on the board of the National Aboriginal Achievement Foundation and of the Aboriginal Business Development Corporation and the City of Winnipeg development corporation.

Daniel F. Gallivan
Partner
Cox Hanson O'Reilly
Matheson
Halifax
A partner with Cox Hanson O'Reilly Matheson, Barristers and Solicitors, Mr. Gallivan specializes in corporate commercial, energy, and securities law. He serves as a director of the Bank of Canada and is a former Vice-Chair of the Nova Scotia Securities Commission.

James R. Savary
Associate Professor and Chair
Department of Economics
York University
Toronto
Professor Savary is Chair of the Technical Committee on Privacy of the Canadian Standards Association, Chair of the Board of Directors of the Canadian Motor Vehicle Arbitration Plan, and past Chair of the Stakeholder Advisory Council of the Canadian Payments Association.

J. M. Toulouse
Director
École Des Hautes Études
Commerciales
Montreal
Dr. Toulouse is the Director of this graduate business school. A full professor, he teaches courses in entrepreneurship, business strategy, organizational dynamics and strategic decision-making.

Industry Directors:

Donald Panchuk
Vice-President,
Administration, Regulatory
Matters and Secretary
Phillips, Hager & North
Investment Management Ltd
Vancouver

Member of the Board of Directors of the Investment Funds Institute of Canada (IFIC)

John Pattison
Senior Vice-President,
Regulatory and
Corporate Affairs
CIBC
Toronto

Brian Porter
Executive Managing Director
Scotia Capital Inc.
Toronto

Member of the Board of Directors and Executive Committee of the Investment Dealers Association of Canada (IDA)

Gary Reamey
Principal
Edward Jones
Mississauga

Member of the Board of Directors and Executive Committee of the Investment Dealers Association of Canada (IDA)

Fredric Tomczyk
Vice-Chair,
Corporate Operations
TD Bank Financial Group
Toronto

Member of the Executive Council of the Canadian Bankers Association (CBA)

W. Terrence Wright
Senior Vice-President,
General Counsel & Secretary
Investors Group Inc.
Winnipeg

Chair of the Board of Directors of the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Funds Institute of Canada (IFIC)

**As of March 31, 2003*

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