

Comparing OBSI to ADRBO (2018)

		Requirements Under Canada’s Banking Regulations	OBSI <p>Banks have the choice to use the External Dispute Resolution (EDR) services provided by the Ombudsman for Banking Services and Investments, which banks voluntarily created in 1996.</p> <p>All Canadian securities registrants outside of Quebec are required to use OBSI as their dispute resolution provider.</p>	For-Profit External Dispute Resolution <p>Banks have the choice to participate in (“EDR”) services currently offered by ADR Chambers Banking Ombuds Office (“ADRBO”)</p>
1.	Meets International Standards ¹ - ie accessible, affordable, independent, fair, accountable, timely and efficient	No –section 5 (Purpose) creates ECBs that are accessible, accountable, impartial, and independent, transparent, effective, timely and cooperative but <i>not fair</i> . The regulations also permit multiple ECBs thereby undermining independence and impartiality.	Yes – OBSI’s financial condition is not reliant on one or two significant financial institutions given that all securities dealers (investment dealers, PMs, EMDs and SPDs) are required to utilize OBSI for investment complaints involving securities.	No. ADRBO has the following major Schedule I banks as its members: <p>Royal Bank of Canada, TD Bank Group, and National Bank of Canada (along with DirectCash Bank) and they compensate ADRBO directly as set out in item 3 below.</p> <p>ADRBO relies on the very banks whose cases it handles for direct funding. Such a structure creates inherent conflicts of interest and raises questions of ADRBO’s independence.</p>
2.	Independent of Financial Industry	As stated by a 2012 World Bank report, a regime that allows the financial industry to choose between two or more competing financial ombudsmen “ <i>presents severe risks to independence and impartiality – because financial businesses may favour the ombudsman they consider likely to give businesses the best deal. ...creates one-sided competition – because, unlike the financial businesses, the consumers are not given any choice of ombudsman</i> ”	Yes, all securities registrants required to utilize OBSI’s services.	No. ² ADRBO is a private, for-profit company that is paid directly from the banks (see item 3 below).

3.	Fee Structure Aligns with Accessibility, Independence, Fairness, Accountability, etc	Section 7(q)(iii) of the banking regulations requires the ECB to make public all sources of funding for its functions and activities as an ECB including fees charged to each of its members for its services and the method of calculating those fees <i>but does not restrict how they are determined.</i>	<p>No misaligned incentives.</p> <p>For banks and other deposit-taking firms, the banking sector allocation is divided among institutions on the basis of their self-declared Canadian banking assets relative to other banks in the most recent benchmark year. Example: Bank of Nova Scotia: \$433,148 for 2017 and Bank of Montreal \$373,040³.</p>	<p>Misaligned incentives.</p> <p>ADRBO’s fees based on hourly basis plus tiered administrative fee depending on number of complaints (rises exponentially with greater number of complaints). This encourages behaviour that would discourage complaints from going to ADRBO or providing “90 day letter” so complainant can go to ADRBO or raising awareness of consumer right to go to AreDRBO.</p>
4.	Governance of Entity in Public Interest	No requirements other than “make information available to the public about (i) its constitution and governance and the identify of its members” (Section 7(q)(i))	<p>Industry and community directors on Board of Directors. By-laws publicly available⁴ and majority of community directors required for “independence matters” such as hiring and firing of ombudsman.</p> <p>Audited Financial Highlighted provided in Annual Report.</p>	<p>ADRBO is a private company and board of directors comprised of individuals with professional expertise and experience in management and/or corporate governance.⁵</p> <p>No by-laws are available on its website.</p> <p>No audited financial information available.</p>

5.	Right to Go to ECB If not Satisfied or 90 days have passed	<p>CG-12 Internal Dispute Resolution Guidelines sets out that FRFIs should outline timelines that: “within 90 days or less when possible, provide the consumer with a substantive written response to his or her complaint that includes...the right to escalate the complaint to the ECB...upon receipt of the FRFI’s final decision....or if the complaint has not been resolved within 90 days following receipt of the complaint at the second level of complaint handling”.</p> <p>Level of complaint handling ambiguous and can result in multiple steps having to be taken internally by consumer.</p> <p>No requirement for a 90 day expiration letter.</p>	<p>Yes.</p> <p>Can complain to OBSI once 90 days have passed (not 90 days from bank internal ombudsman determination). No requirement for 90 day expiration letter.</p>	<p>No.</p> <p>Can complain to ADRBO once you have final written response from bank’s internal ombudsman office or 90 day expiration letter from the bank.</p> <p>Must exhaust bank’s internal complaint process including internal ombudsman step and only after 90 days after that process (with 90 day expiration letter) can consumer go to ADRBO.</p>
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6.	Number of Initial Contacts	Banking regulations require that an ECB submit an annual report on its activities which includes..."(ii) in respect of each of its members, the number of complaints that it received, the number of complaints that it determined were within its terms of reference, number of final recommendations that it made and the number of complaints that, in its opinion, were resolved to the satisfaction of the persons who made them".	<p>OBSI received over 4000 inquiries each year.</p> <p>OBSI received 392 banking complaints and 358 of those were within its mandate or 91%.</p> <p>This implies that 8% of consumer complaints were rejected as out of mandate.</p> <p>28% increase in within mandate complaints.⁶</p>	<p>ADRBO had 346 intakes (consumers who completed the process to complain as set out in item 7 below including required 90 day expiration letters) and of these 275 were opened as complaints or 79%.</p> <p>This implies that 21% of consumer complaints were rejected as out of mandate.</p> <p>22% increase in within mandate complaints.⁷</p>
7.	Outside Mandate	Definition of complaint according to bank regulations is a complaint made by a person "...about a product or service that was requested or received by the person from the bank...." (section 1)	<p>91% deemed within the mandate.</p> <p>Terms of Reference indicate OBSI will not investigate matters that relate to (a) interest rate and risk management policies and practices; (b) pricing of financial services; (c) scale of fees or charges (d) commercial judgement of the bank or (e) more appropriate forum.</p>	<p>79% deemed within the mandate.</p> <p>Terms of Reference indicate ADRBO will not investigate the same types of items as OBSI but also:</p> <ul style="list-style-type: none">- Bank's decision to not maintain the complainant as a customer going forward where the proper internal procedure was followed.- Made by unrelated complainants based on different facts that raise similar issues with the object of making a "class action"-type recommendation.- May defer or decline to consider complaint if being investigated by a regulatory body.- We have heard that ADRBO deems out of mandate any market linked GICs or other products based on the fact that "investment advice" was associated with the transaction. This, despite the fact that such products are clearly banking products and have been determined not to be securities.

8.	Number of Files Closed and Percentage in Favour of Consumer		<p>OBSI closed 349 cases.</p> <p>79 in favour of consumer.</p> <p>270 in favour of bank (can include reinstating bank's offer).</p> <p>Approximately 23% of cases in favour of consumer.</p>	<p>ADRBO closed 267 files.</p> <p>181 complaints closed by initial view letters ie matters determined out of mandate (at least 10) or ADRBO, on basis of initial information provided by complainant and bank, determines it is highly unlikely that an investigation would yield a different conclusion than the Member Bank's position or result in any compensation to the complaint, ADRBO issues a letter which appears to offer no compensation to the consumer.</p> <p>12 resolved (10 resolved after investigation, 2 during initial review stage)</p> <p>73 investigation completed and final reports issued – 8 in favour of the consumer, 55 in favour of the bank, 10 split</p> <p>1 abandoned</p> <p>8% of files closed in favour of consumer (if include those "resolved") or 3% if only those it states are in favour of consumer (based on 257 number⁸).</p> <p>Chart in Annual Report indicates 75% in favour of bank, 8% in favour of consumer and 10% split.</p>
9.	Time to Complete Investigation		<p>50 days on average.</p> <p>OBSI has an expedited resolution system to fast track simple disputes. The time to complete an investigation under this framework is 32 days.</p>	<p>73 final reports were issued and average time to close was 54 days.</p> <p>Time to close 181 initial view letters was 14 days</p>
10.	Average Amount of Compensation	Not specified as a requirement	\$2,089	Not disclosed.

11.	Statistics on Type of Complaints	Not governed by banking regulations.	Top issues were: Fraud Relationship ended Transaction – unauthorized and Service Detailed, granular break down of type of cases provided, including demographic breakdown.	ADRBO provides top 10 types of complaints and their percentage Poor customer service (excl. mortgage complaints) 17% Credit card/debit card fraud 12% Mortgage complaints (poor service or advice) 8% Fraudulent/unauthorized Transaction 7% etc. Lack of detail regarding complaints including no demographic information (except language).
12.	Public Outreach and Prevention Mandate		Yes.	No.
			Public education, research and contact with community groups.	

¹ G20 High-Level Principles on Financial Consumer Protection, October 2011. In particular, Principle 9 requires that “Jurisdictions should ensure that consumers have access to adequate complaint handling and redress mechanisms that are *accessible, affordable, independent, fair, accountable, timely and efficient*....Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorized agents internal dispute resolution mechanisms.” [emphasis added] Available online at <http://www.oecd.org/dataoecd/58/26/48892010.pdf>. See also the Joint Forum of Financial Market Regulators, “The Financial Services OmbudsNetwork – A Framework for Collaboration”, Guideline No. 1, *Independence* [emphasis added] Available online at http://www.obsi.ca/images/document/up-2Framework_with_the_Regulators_EN.pdf and the International Ombudsman Association Code of Ethics, ethical principles of Independence, and Neutrality and Impartiality. Available online at <http://www.ombudsassociation.org/about-us/code-ethics>.

² ADBRO’s website states that ADR Chambers is a private company that operates independently of the participating banks. FAIR Canada believes that selection of for-profit EDR services by banks and direct payment by banks leads to an actual and/or perceived conflict of interest that compromises the independence of for-profit EDR services.

³ <https://www.obsi.ca/en/about-us/resources/Documents/Participating-Firm---Banking-Fees-2017.pdf>.

⁴ <https://www.obsi.ca/en/about-us/resources/Documents/OBSI-Consolidated-By-laws.pdf>

⁵ https://bankingombuds.ca/?page_id=28 and ADR Chambers Banking Ombuds Office Terms of Reference effective July 24, 2105, available at https://bankingombuds.ca/wp-content/uploads/2016/05/ADRBO-EN-Terms_of_Reference.pdf (see sections 32 and 33).

⁶ OBSI Annual Report for 2017 at 24; available online at file:///C:/Users/mpassmore/Downloads/OBSI%20AR2017_EN.pdf.

⁷ ADRBO Annual Report 2017, at 5; available online at <https://bankingombuds.ca/wp-content/uploads/2018/03/ADRBO-Annual-Report-2017.pdf>.

⁸ 267 minus 10 from prior fiscal year that it states were out of mandate.