

## Comparing OBSI to For-Profit EDR Providers Hired by Banks

		<b>OBSI</b> Banks participate voluntarily and securities registrants that are MFDA and IIROC members are mandated to participate for their client complaints.	<b>For-Profit External Dispute Resolution</b> ("EDR") Services currently offered by ADR Chambers Banking Ombuds Office ("ADRBO")  ADRBO is currently used by Royal Bank and TD Bank for their customers' banking-related complaints only.
<b>1.</b>	<b>Meets International Standards<sup>1</sup></b>	Yes.	No.
<b>2.</b>	<b>Independent of Financial Industry</b>	Yes.	No. <sup>2</sup>
<b>3.</b>	<b>Accountable</b>	Yes; but can be improved.  Independent review against Guidelines set by the Joint Forum Framework every 3 years (last conducted in 2011 by The Navigator Company).  Accountability to regulators currently being discussed. <sup>3</sup>	No.  ADRBO is not accountable to consumers, regulators or government. ADRBO is only accountable to banks that pay for its services. No independent review. No oversight by Ministry of Finance.
<b>4.</b>	<b>Transparent</b>	Yes.  Provides detailed statistics to the public through its annual report and quarterly reporting.  Undertakes a public consultation of rule changes such as for its loss calculation methodology.  Publishes detailed case studies using plain language.	Somewhat.  Some statistical data provided in the ADRBO annual report but not as extensive as OBSI.  No public consultation or publication of details of how it determines losses in its banking complaints.  Publishes limited case studies.
<b>5.</b>	<b>Easy to Initiate Complaint</b>	Yes.  Consumers can fill out and submit simple Complaint Form by mail, fax, email or walk-in and/or call OBSI toll-free.	No.  Consumer must complete and submit, by mail or fax only, detailed Complaint Submission Form and supporting documentation before ADRBO representative will contact consumer <sup>4</sup> . Consumers appear to see the Complaint Submission Form as a difficult barrier.

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6.	<b>Assist Consumer to Articulate Claim/Effectively Participate without Need for Legal Assistance</b>	Yes.	No.
		<p>Will not advocate for a party but will support the consumer with the complaint process, including helping them to understand whether they have a legitimate complaint, and assist them in the articulation of the complaint where necessary. Investigators with industry expertise are able to uncover relevant facts, policies, regulations or operational realities to help with the articulation of complaints.</p>	<p>It is not clear whether ADRBO adequately assists consumers given the bank's greater resources and knowledge. Not clear whether ADRBO takes active role in investigating complaint rather than simply relying on the parties to bring forward all the necessary evidence and arguments. As a result, there is often a need for legal representation for consumers so that consumers are not placed at a disadvantage given the financial firms' greater resources and technical knowledge.</p> <p>Consumers may have to incur costs relative to the possible need for expert advice on industry issues, in order best articulate claim and understand process.</p>
7.	<b>Time to Complete Investigation</b>	87.3 per cent of all banking cases completed within six months. Average length of time to complete banking investigations was four months.	40.6 per cent of all banking cases completed within 6 months. Average time for completion of an investigation was 6.6 months, with the shortest period being 3 months and the longest 11 months.
8.	<b>Consistency of Decisions</b>	Yes.	Not with multiple EDR providers.
		A single national ombudsman provides for the ability to have consistency in decision-making across Canada.	The potential for multiple EDR service providers in the future could result in a lack of consistency in decision-making and loss calculation methodology. Competition among for-profit EDR service providers on basis of cost may benefit banks but runs counter to the principles of independence and impartiality and is undesirable and inefficient on a range of policy levels <sup>5</sup> .

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9.	<b>Investigate and Report Consumer Complaints that Uncover Widespread Issues</b>	Yes.	No.
		<p>OBSI will identify and investigate issues that may be widespread, go beyond one consumer and that have affected many consumers at the same bank or investment firm. It can take action in response to widespread issues<sup>6</sup>.</p> <p>Can publicize non-compliance with systemic recommendation on no-names basis and inform regulator of non-compliance with recommendation on a named basis.</p>	<p>Where ADRBO makes a finding for a consumer in a case where it appears many other consumers may have been affected or where it has the potential to affect many consumers at the firm, it will not investigate the other cases or/and award any compensation to the other consumers unless the other consumers each lodge their own separate complaint.</p> <p>No reporting to consumers, regulators or government on widespread issues</p>
10.	<b>Fair and Reasonable Standard Used</b>	Yes.	Yes.
		Fair in all the circumstances; overarching principle is reasonable estimate of the financial position the consumer would be in but for the bank's error.	Fair and reasonable in the circumstances to the consumer and bank; seeks to achieve a resolution that is satisfactory to consumer and bank.
11.	<b>Informal Rules of Procedure</b>	Yes.	Yes.
12.	<b>Binding Decision</b>	No.	No.
		Not binding. Independent review of OBSI recommended, as part of a package of reforms, that OBSI be given power to make binding decisions.	Not binding.

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13.	<b>Action if Decision not Accepted</b>	OBSI has the power to publicly "name and shame" a firm that does not comply with its recommendation.	If the bank does not accept the recommendation, ADRBO will post on its website its recommendation and bank's refusal to accept it as well as describing complaint in a general way. It will also report the refusal in the ADRBO annual report <sup>7</sup> but does not "name and shame" its bank client.
14.	<b>Types of Award</b>	<p>Monetary or non-monetary ("compensation or action"); financial or non-financial loss.</p> <p>May compensate for non-financial losses – distress, inconvenience, loss of reputation, damage to credit rating or loss of privacy. No losses for pain and suffering or for health issues.</p>	Monetary only; not clear if it would award non-financial losses.
15.	<b>Accessibility for Consumers in Languages Other than Official Languages</b>	Yes.	Not at present.
		Services available in French and English plus 170 other languages via interpreter.	ADRBO has advised FAIR that it intends to hire an independent company to provide translation and interpretation services.
16.	<b>Area of Expertise</b>	<p>Ombudsman expertise in fairness, equity, balancing of powers, public outreach. Expertise in resolving disputes between consumers and financial institutions.</p> <p>Investigators are bankers, lawyers, chartered accountants and CMAs.</p>	<p>ADRBO is staffed with judges, commercial lawyers and other dispute resolution professionals with expertise in assisting legal and business communities to resolve their disputes, often commercial disputes between sophisticated parties where both parties are usually represented by counsel and have their positions articulated by lawyers.</p> <p>Investigators are lawyers, generally, who have represented banks and other financial institutions or corporate clients.</p>

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<b>17.</b>	<b>Public Outreach and Prevention Mandate</b>	Yes.	No.
		Public education, research and contact with community groups.	
<b>18.</b>	<b>Stakeholder Representation on Board</b>	Yes.	Do not know the composition of Board of Directors of ADR Chambers.
		Board of OBSI represents financial industry and public interest. Proposed to reform to have equal representation of consumers, financial institutions and the public interest.	

<sup>1</sup> 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 complaints 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 authorised 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. Available online at [http://www.obsi.ca/images/document/up-2Framework\\_with\\_the\\_Regulators\\_EN.pdf](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>.

<sup>2</sup> ADRBO'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.

<sup>3</sup> OBSI has called for greater oversight by securities regulators and the Federal Ministry of Finance. The U.K.'s Financial Ombudsman Service is a statutory body; Australia and New Zealand's EDR services are approved by their respective regulators.

<sup>4</sup> ADRBO's Annual Report 2011 at page 4 indicates that twelve out of forty-two consumers who were sent a Complaint Submission Form did not return the completed forms. Available online at <http://www.bankingombuds.ca/docs/ADRBO%20Annual%20Report%202011%20Final%20-%20English%20Version.pdf>.

<sup>5</sup> See The World Bank Report which is critical of the idea of "competitive" ombudsman based on the experience of some countries, at page 38-39 and at page 75. Available online at [http://www.networksfo.org/Resolving-disputes-between-consumers-and-financial-businesses\\_Fundamentals-for-a-financial-ombudsman\\_The-World-Bank\\_January2012.pdf](http://www.networksfo.org/Resolving-disputes-between-consumers-and-financial-businesses_Fundamentals-for-a-financial-ombudsman_The-World-Bank_January2012.pdf).

<sup>6</sup> See OBSI's 2011 Annual Report which states that it identified three issues which were determined to be systemic concerns, all with one firm and all related to a lack of disclosure in mortgage documentation, the largest concern being the calculation of the "interest rate differential". Available online at [http://www.obsi.ca/images/document/up-4OBSI\\_Annual\\_Report\\_2011.pdf](http://www.obsi.ca/images/document/up-4OBSI_Annual_Report_2011.pdf).

<sup>7</sup> To date, no refusals to accept the recommendation have occurred resulting in a mention in an ADRBO Annual Report.