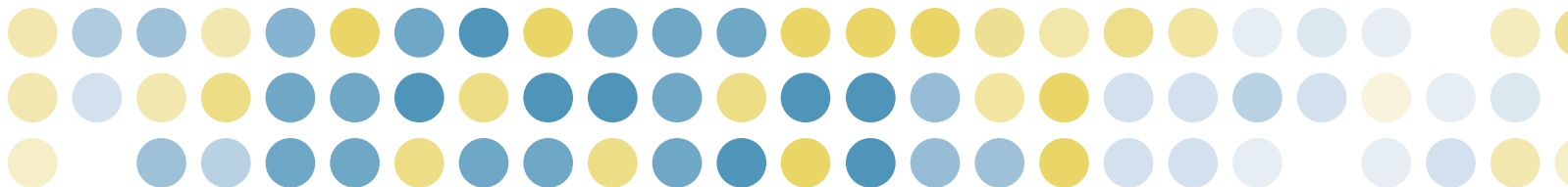


awareness  
independence  
fairness

CANADIAN BANKING OMBUDSMAN ANNUAL REPORT 2001





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### 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 BANK FINANCIAL GROUPS,

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.

AS WELL, WE PROMISE TO CONTINUE DOING ALL WE CAN TO INCREASE CUSTOMER AND INDUSTRY AWARENESS OF THE OMBUDSMAN PROCESS AND OF THE ROLE OF THE CANADIAN BANKING OMBUDSMAN.

# THE CANADIAN BANKING OMBUDSMAN: WHO WE ARE, WHAT WE DO AND HOW WE DO IT.

## MEMBERS:

ABN AMRO Bank N.V., Canada Branch\*  
Amex Bank of Canada  
Bank of America, N.A., Canada Branch\*  
Bank of Montreal  
Bank of Tokyo-Mitsubishi (Canada)\*  
Bank One, N.A., Canada Branch\*  
Bayerische Landesbank Girozentrale\*  
Canadian Imperial Bank of Commerce  
Canadian Western Bank  
Citibank Canada  
Citizens Bank of Canada\*  
Citizens Trust Company\*  
Comerica Bank, Canada Branch\*  
Credit Suisse First Boston Toronto Branch\*  
Deutsche Bank AG, Canada Branch\*  
Equitable Trust Company (The)\*  
First Data Loan Company\*  
Home Trust Company\*  
Household Trust Company\*  
HSBC Bank Canada  
ING Bank of Canada  
Korea Exchange Bank of Canada\*  
Laurentian Bank of Canada  
League Savings and Mortgage\*  
MBNA Canada Bank  
MCAP Inc.\*  
Mellon Bank, N.A., Canada Branch\*  
Mizuho Corporate Bank (Canada)\*  
National Bank of Canada  
Northern Trust Company, Canada (The)\*  
Peace Hills Trust\*  
RBC Financial Group  
Scotiabank  
TD Bank Financial Group  
The Bank of East Asia (Canada)\*

*\*Membership after fiscal year end  
Oct. 31, 2001*

**T**he Canadian Banking Ombudsman operates as an independent, arms-length final arbiter for customer disputes that cannot be resolved by their financial services provider. Our specialized staff includes lawyers, accountants and others knowledgeable about business and financial services industry practices. There is no charge to consumers for our dispute resolution service.

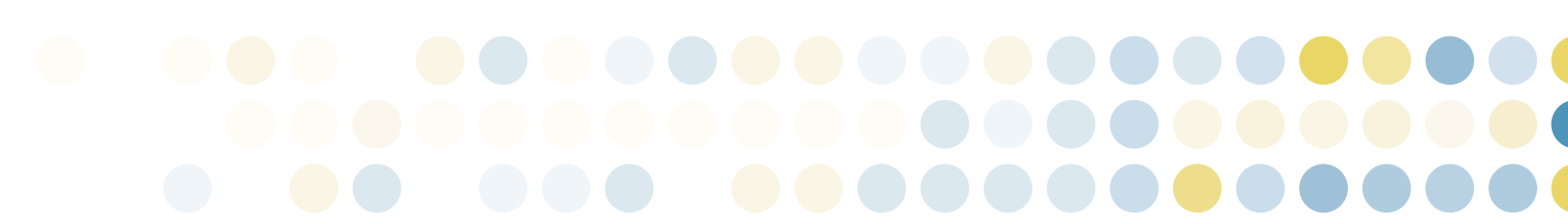
Although we are funded by the industry, our independence is guaranteed by the fact that the Ombudsman reports to a Board of Directors of which a majority of members are unaffiliated with the financial services industry.

Since 1996, we have carried out this dispute resolution function for Canada's banks. Beginning in 2002, we are also extending that responsibility to non-bank investment dealers, mutual fund dealers and mutual fund companies.

We are mandated to investigate a wide range of financial services complaints, with the exception of general pricing of products and services, credit granting and other risk management policies, issues related to general industry policies and procedures, and matters that have been, or are, before the courts.

Customers do not surrender their legal rights by participating in the Ombudsman process. To ensure full cooperation and openness during the process, parties sign an agreement that files of the Ombudsman and discussions between the Ombudsman, the customer and the financial services provider may not be used in subsequent legal or regulatory proceedings.

The Canadian Banking Ombudsman is the final stage of a two-tiered, formalized ombudsman process. Under this system, there is an internal ombudsman at each bank financial group. Going forward, all members of our expanded



organization will have a complaint resolution process – an ombudsman or designated arbiter of disputes, with verifiable procedures.

The process places the primary responsibility for resolving a customer's complaint on the business units of the financial services providers – the branch staff, the manager of the local office of an investment dealer, mutual fund dealers, and so on. Complaints not resolved at these “points of sale” are considered by complaint-handling units or customer service groups – and the majority of complaints are resolved at this level. Those that are not settled at this stage are referred to the member's internal ombudsman. Only the very few complaints that are not resolved by internal ombudsmen end up in the office of the Canadian Banking Ombudsman and these cases tend to be fairly complex, often involving unusual facts or situations and require a high degree of judgement.

Once the Ombudsman has confirmed that a complaint falls within its terms of reference and the member's ombudsman process has been completed, the customer is asked to sign a letter of understanding. This is a plain language agreement between the customer, 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 release to the Ombudsman its files related to the complaint which contain confidential financial information about the customer. (See our Privacy Statement for more information on how we protect personal information)

The complaint resolution process is not rigidly structured. When making a recommendation, the Ombudsman considers fairness and good business and industry practices as well as any standards established by industry regulatory bodies, professional associations, or by the individual financial services provider. In many instances, the industry has codified its standards of performance and service. Such codes are useful benchmarks when trying to determine what constitutes good practices.

Neither the customer nor the bank financial group is bound by the Ombudsman's recommendation. In the event that a financial services provider does not comply with a recommendation, the Ombudsman is required to make a public report. To date, members have accepted all recommendations of the Ombudsman. The Ombudsman must report the number of complaints it receives from each member, the results of the Ombudsman's involvement, and the time taken to conclude its investigations. This information is released to the media and distributed to interested individuals, associations and governments.

The Ombudsman will not discuss a particular customer's complaint with the media, even with consent of the customer. This policy exists out of concern that confidence in the confidentiality of the ombudsman process would be jeopardized if the Ombudsman publicly commented on specific cases.

The ombudsman process is based on the simple belief that customers deserve fair resolution of complaints. The system is structured to provide quick resolution of straightforward complaints and objective and independent investigation of the more difficult issues. Its effectiveness as a dispute resolution process has been recognized by both the industry and the consumer.

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## THE PROCESS

### **Complaint handling starts within the financial services provider**

Billions of transactions are executed annually with bank financial groups – in person at business units, through ABM machines, by telephone and over the internet. A customer question, concern or complaint, is usually resolved to the customer's satisfaction on the spot or, if investigation is required, within a few days.

Customers who are dissatisfied with the resolution proposed or explanations provided are given information about the financial services provider's dispute resolution process, including the ombudsman process, so they can determine whether to press the complaint to a higher level. Member financial services providers have brochures about their complaint handling process on display in branches and information is available on their web sites, or in documents such as account agreements.

### **Complaints brought to complaint-handling groups**

The major divisions and subsidiaries of member financial services providers have complaint-handling groups for disputes not resolved at the business unit level. Unresolved complaints regarding banking services, for example, are typically directed to customer satisfaction groups, while complaints relating to investment services are usually directed to the compliance department. Complaints raised to this level of the process are recorded, tracked and analyzed to determine if there are systemic issues that need to be addressed. Customers with more complicated unresolved issues usually receive a written response.

### **Complaints brought to internal ombudsmen**

A member's own internal ombudsman investigates unresolved complaints from customers of all subsidiaries of the financial services provider. To ensure the necessary autonomy, internal ombudsmen typically report to the chief executive officer of the company. During 2001, 1,899 complaints were investigated by internal ombudsmen. In about two cases out of three, agreement was reached with the customer to resolve the dispute. Customers usually receive a written response from the internal ombudsman. They are also advised of their right to take their complaint to the Canadian Banking Ombudsman within six months of the conclusion of the internal ombudsman's review.

The number of complaints escalated to the level of the internal ombudsmen has been declining. They attribute this decline to the greater emphasis being placed on customer service training and addressing customer concerns at source.

### **Cases brought to the Canadian Banking Ombudsman**

Cases that arrive at the Ombudsman's office are usually the most challenging. In recent years, we have recommended bank financial groups take action in favor of the customer in about a quarter of the cases we investigate. This has declined slightly in recent years, a reflection of more effective complaint resolution within the industry. Although this may seem like a low proportion, it is important to remember that the Ombudsman is the last step in a multi-stage process. (Statistical details on cases and sample case overviews are available elsewhere in this report)

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The ombudsman process is based on the simple belief that customers deserve fair resolution of complaints. The system is structured to provide quick resolution of straightforward complaints and objective and independent investigation of the more difficult issues.

## MESSAGE FROM THE CHAIR OF THE BOARD OF DIRECTORS



**Peggy-Anne Brown**  
President  
Brown Crawshaw Inc.  
Vancouver

The last 18 months have been a time of significant change, both for the financial services industry and the office of the Canadian Banking Ombudsman (CBO). The Government of Canada passed sweeping new legislation that will have a dramatic effect on every area of the financial services sector, including measures related to consumer protection. A joint task force made up of industry and federal and provincial regulators looked at ways to make it easier for unsatisfied consumers to learn how to complain and to resolve disputes with their financial services provider. One of the outcomes is that the CBO will take on wider responsibilities and will be adopting a new name, yet to be determined, to reflect the changes. We are expanding from a dispute resolution mechanism for individual and small business customers of the bank financial groups to one with a broader mandate to also investigate unresolved complaints about non-bank investment dealers and mutual fund firms.

The expanded Ombudsman's office — built upon the infrastructure established by the CBO — combines the dispute resolution services of participating banks with those of the 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). It is a system that responds appropriately to the convergence taking place in the financial services industry. The new structure will comply with standards for complaint handling created by the newly-established umbrella organization, the Centre for the Financial Services OmbudsNetwork (CFSON).

The end result is an appeal process that more closely reflects our vision of what the country's financial services consumers need in terms of an independent and impartial redress system for concerns and complaints. Those of you familiar with the views of the current Board of Directors (comprising six independents and five industry executives) will know that it has supported the concept of a

comprehensive ombudsman service because of greater accessibility and consistency on a national basis.

Going forward, I am confident that our expanded organization — with a larger, reconstituted independent board reflecting our expanded membership — will continue to operate with the best interests of the customer in mind. It will be faced with new emerging and complex issues while, at the same time, managing those issues related to the products and services offered by the bank financial groups, trust companies, independent investment dealers, mutual fund companies and dealers. Over the past six years, thanks to the appropriate financial resources provided by our members, the CBO has built up extensive experience in complaint handling, including matters related to bank-owned securities firms and mutual fund business units. It will be a natural step for the organization to take on the added responsibility presented by the independent investment dealers and mutual fund firms.

Looking back on this period of change, I am extremely proud that the CBO was among those to influence this change in a positive manner. In our presentations to the Commons and Senate committees reviewing the new legislation, we set out why one-stop access for customers of all financial service providers makes sense. We also explained that a private sector approach that covers both federally and provincially-regulated providers can offer the best service to customers.

The Board is pleased that the concept of an internal ombudsman is gaining favour outside Canada as well. As a result of visits by our Ombudsman, Michael Lauber, some of the major financial institutions in South Africa and Australia have introduced this additional level of dispute settlement. We will watch with interest how these processes evolve.

Finally, I am pleased to report that, throughout the period of transition, CBO Board decisions were made by consensus and always with the customer as the primary focus. For this, I am deeply grateful to my fellow Board members, and to Michael, who has been our Ombudsman since the CBO began its work in 1996. The Board is delighted that Michael and his dedicated staff will be taking on the expanded Ombudsman role in the new organization.

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

## MESSAGE FROM THE OMBUDSMAN

Michael Lauber

Canadian Banking Ombudsman



**A**s the Canadian Banking Ombudsman (CBO) moves into a new era, our top priority will be to build on the qualities that have made our system work so well over the past six years. As we launch our expanded organization it will be critical to ensure that this unique appeal process for financial services customers carries on the role of impartial mediator — or, as some call it, “honest broker” — keeping the confidence of those on both sides of a dispute, the institutions as well as the consumer. For, it is this balance — with the sole objective of fairness based on good business practice — that is the foundation of this organization.

I am pleased the process is working. It is simple, timely and, most of all, fair. The ombudsmen at member banks, who represent the last stage in a series of steps that unsatisfied customers can take within a financial institution, report satisfactory resolution in 70 per cent of the cases they handled. The CBO has always believed the customer is best served when concerns are handled directly by the financial services provider where the consumer does business. Cases not settled by the individual bank ombudsmen — the toughest ones — end up in the office of the CBO. In fiscal 2001, the CBO dealt with 1,519 cases, many of them inquiries through letters, with 170 — about 11 per cent — proceeding to formal investigation. On average, files were closed within 45 days, with more than 80 per cent closing within 90 days. Some 17 per cent of overall cases were resolved in favor of the customer. In another seven per cent, small adjustments were made to the bank’s initial offer or a small payment was made to compensate for poor service or inconvenience. In the balance of cases, we determined the member bank had handled the situation appropriately.

The number of cases investigated by the CBO relative to the number of initial inquiries to our office by customers continues to decline, a reflection of an improving complaint-handling process within the bank financial groups. The complaints that do come to us are the most challenging ones, often highly judgmental, and certainly never clear cut. It is no surprise, for instance, that we investigated more wealth management cases (20 per cent of complaints now relate to investments) — partly a reflection of the demographic change we are experiencing, as well as the natural extension of today’s banking relationships. At the same time, small business complaints declined. While the number of complaints coming into the CBO has remained constant, there has been a marked increase in phone inquiries and web

site activity — evidence that more consumers are becoming aware of the CBO and what it has to offer.

Our Chair has described in her message our new dispute resolution responsibilities for 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). Previously, the CBO managed customers’ complaints about banks, including bank-owned securities firms and mutual fund business units. The combined services, independent of both industry and government, will make it simpler for consumers to navigate the complaint process. We will be adopting a new name to reflect our wider mandate.

In the year ahead, we will be working with our new members to integrate services, as well as adding staff and moving premises. The challenge, as always, will be to make these changes in a seamless way so that the customer remains the primary focus.

As we work towards an orderly transition, I want to express my sincerest gratitude to my colleagues for their hard work and dedication to fairness in resolving disputes on behalf of our customers. I would also like to thank our Board of Directors and to acknowledge the many hours of hard work put in by our Chair, Dr. Peggy-Anne Brown, in particular her leadership of the Board throughout our discussions with the investment industry about the expanded service.

Lastly, I invite you to visit our website, [www.bankingombudsman.com](http://www.bankingombudsman.com), for the latest news updates on the reorganization process.

*Michael Lauber, FCA*  
*Canadian Banking Ombudsman*

## COMMENTS ON THE STATISTICAL SUMMARY FOR THE YEAR

The number of individuals and small businesses contacting our office with complaints and inquiries continues to increase, and totaled 1,519 in 2001. That was up from 1,179 in 2000 and 1,083 in 1999. We are also seeing sharp increases in activity on the CBO Web site. The number of unique visitors to the Web site rose steadily throughout the year to an average of 2,800 a month in the final quarter compared with an average of about 1,600 a month in the first quarter.

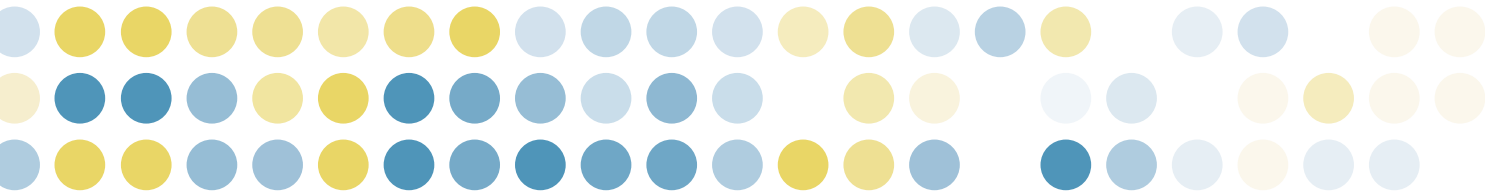
Many customers contacting our office by letter or phone simply want to discuss their case with someone knowledgeable and impartial to determine whether they have

a complaint they should pursue. If a customer's complaint has not yet been investigated by their financial services provider, we direct them back to the appropriate person. Complaints can be lodged with the Ombudsman up to six months following completion of an investigation by the member bank internal ombudsman.

While inquiries to our office continue to increase, the number of formal investigations launched has remained relatively flat. In 2001, we began 170 investigations compared with 167 in 2000 and 171 in 1999. We are also seeing a downward trend in cases where, after investigation, we recommended the bank take action in favour of the customer

### STATISTICAL OVERVIEW FOR THE YEAR ENDED OCTOBER 31, 2001

	Canadian Banking Ombudsman		
	Personal	Small business	
<b>COMPLAINTS AND INQUIRIES RECEIVED</b>	<b>1,357</b>	<b>162</b>	
<b>COMPLAINTS RESULTING IN INVESTIGATIONS</b>	<b>147</b>	<b>23</b>	
<b>THE NATURE OF THE COMPLAINTS WERE AS FOLLOWS:</b>			
Account and transactions	22%	39%	
Card services	12%	4%	
Fees and charges	9%	4%	
Credit - new or changed terms	5%	22%	
Credit - collections	14%	9%	
Privacy and confidentiality	1%	0%	
Service and advice	17%	9%	
Tied selling	0%	0%	
Other selling practices	1%	0%	
Other	19%	13%	
	100%	100%	
<b>INVESTIGATIONS CONCLUDED IN THE PERIOD</b>	<b>169</b>	<b>20</b>	
<b>THE RESULT OF THE CANADIAN BANKING OMBUDSMAN'S REVIEW WAS:</b>			
We recommended that the bank take action in favour of the customer, which was followed in each case	17%	15%	
We recommended modest adjustments to the bank's offer	5%	20%	
We found the bank's action appropriate in the circumstance	78%	65%	
<b>OMBUDSMAN'S ASSESSMENT OF COMPLAINANTS REACTION*:</b>			
Agreement was reached	22%	20%	
Partial resolution of the complaint was achieved	6%	10%	
No agreement reached	72%	70%	
Complaints resolved within 20 business days	29%	10%	
Complaints under review at end of year	18	8	



(a recommendation followed in every case). Last year, we recommended the bank take action on behalf of the customer in about one in six cases we investigated, compared with about one in four the previous year.

There was also a slight decline in the number of cases where we recommended a modest adjustment to the bank's offer to compensate for poor service or inconvenience. That occurred in about seven per cent of cases last year compared with nine per cent the previous year.

These trends suggest the banks are improving their complaint resolution processes within their own organizations.

Individual Bank Ombudsmen	
Personal	Small business
1,721	178
21%	22%
23%	4%
5%	12%
12%	26%
11%	16%
3%	1%
20%	14%
0%	0%
1%	0%
4%	5%
100%	100%
1,690	172
(not applicable)	
54%	41%
13%	21%
33%	38%
76%	64%
151	21

### COMPLAINTS TO THE CANADIAN BANKING OMBUDSMAN IN THE PERIOD WERE FROM CUSTOMERS OF THE FOLLOWING BANKS:

	Personal	Small business
Amex Bank of Canada	3	0
Bank of Montreal	12	5
Canadian Western Bank	0	0
Canadian Imperial Bank of Commerce	48	4
Citibank Canada	1	0
HSBC Bank Canada	0	2
ING Bank of Canada	0	0
Laurentian Bank of Canada	8	0
MBNA Canada Bank	0	0
National Bank of Canada	16	2
Royal Bank Financial Group	20	3
Scotiabank	18	2
TD Bank Financial Group	21	5
	<b>147</b>	<b>23</b>

### EXPLANATORY NOTES TO REPORT ON ACTIVITIES

**\* Assessment categories**

Agreement 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.

Membership is available to all banks and deposit-taking financial institutions and subsidiaries doing business in Canada. The CBO will be extending services to non-bank investment dealers, mutual fund dealers and mutual fund firms in 2002.

## GOVERNANCE OF THE CANADIAN BANKING OMBUDSMAN

The Canadian Banking Ombudsman was established in 1996 as a not-for-profit corporation, funded by its members. Costs are shared among members based on their relative size as measured by total assets.

At fiscal year-end 2001 there were 13 member banks. Subsequent to our fiscal year end, nine trust and loan companies and 13 foreign-owned banks joined the CBO.

Membership has been available to all banks and deposit-taking financial institutions and subsidiaries doing business in Canada that provide asset-based lending, leasing, mortgages, credit cards and investment services. By agreement, the CBO will be extending services to non-bank investment dealers, mutual fund dealers and mutual fund firms in 2002.

### INDEPENDENCE OF THE OMBUDSMAN

Although funded by financial services providers, great care has been taken to ensure the independence and impartiality of the Ombudsman.

The 11-member Board of Directors of the CBO includes a majority of six independent directors who are not affiliated with the financial services industry. The other five directors are senior bank executives.

The six 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 act as the audit committee. Independent directors are elected for a three-year term and may be re-elected.

While responsible to the Board, the Ombudsman does not report to the Board and 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.

### COMPOSITION OF THE BOARD

Care is also taken to ensure that independent members of the board are clearly seen by the public as being at arms length from the financial services industry.

The independent directors also 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.



## 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, The Honourable Lincoln Alexander is currently Chancellor, University of Guelph and Chairman of the Canadian Race Relations Foundation of Canada.

#### **Beverley A. Brennan**

*Director and Corporate  
Secretary  
Philom Bios Inc.  
Saskatoon*

An officer with Philom Bios Inc., an agbiotech company, Ms. Brennan is a former Chair of the Canadian Institute of Chartered Accountants.

#### **Daniel F. Gallivan, Q.C.**

*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 Board of Directors of the Canadian Motor Vehicle Arbitration Plan, past Chair of the Stakeholder Advisory Council of the Canadian Payments Association, and Chair of the Technical Committee on Privacy of the Canadian Standards 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.

### Bank Directors:

#### **Paul Bedbrook**

*President and  
Chief Executive Officer  
ING Bank of Canada  
Toronto*

#### **Jill Denham**

*Senior Executive  
Vice President  
Retail Markets  
CIBC  
Toronto*

#### **Roderick S. Pennycook**

*Executive Vice President  
Products and Service Delivery  
RBC Royal Bank  
Toronto*

#### **Réal Raymond**

*President &  
Chief Executive Officer  
National Bank of Canada  
Montreal*

#### **Ron G. Rogers**

*Vice Chair  
Personal &  
Commercial Client Group  
Bank of Montreal  
Toronto*

*\*Membership as of fiscal year end Oct. 31, 2001. With the expansion of the Ombudsman mandate in 2002, board membership will be increased to include representatives of non-bank investment dealers, mutual fund dealers and mutual fund companies. The number of independent directors will also be increased to ensure they remain a majority of the Board*

## HOW WE PROTECT YOUR PERSONAL INFORMATION

### THE CANADIAN BANKING OMBUDSMAN IS COMMITTED TO PROTECTING THE PRIVACY RIGHTS OF ITS CLIENTS.

Customers of financial service providers with complaints about privacy and the use of personal information have three avenues of recourse: the internal ombudsman, the CBO, and the Privacy Commissioner of Canada. In some circumstances, they may have recourse to provincial privacy commissioners.

#### CBO PRIVACY STATEMENT:

The Canadian Banking Ombudsman (CBO) is committed to ensuring that your personal information in our possession remains confidential, secure, accurate and accessible. Our Privacy Statement describes our commitment to protect the confidentiality of your personal information.

#### Why we collect your personal information and what we do with it:

With your consent, we collect personal information from you, your financial services provider, and others, to facilitate the investigation and resolution of your complaint. The personal information collected will depend on the nature of the complaint. It may include your birth date, home address, telephone number and information about your finances and health. Your complaint, with personal identifiers removed, may be used to compile statistical data or prepare case studies, which may be made public.

### OUR PRIVACY PRACTICES AND PROCEDURES ARE BASED ON 10 PRINCIPLES:

#### 1. Our accountability to you

The CBO takes its commitment to safeguard your personal information seriously. The Ombudsman is responsible for implementing and overseeing compliance with our privacy policies and practices. Our staff is required to comply with these policies and practices as well.

#### 2. Identifying our purposes for collecting personal information

Before or during the collection of your personal information, we will tell you why we are doing so and explain how we will use it and when it may be disclosed.

#### 3. Giving or withdrawing your consent

We will not collect, use or disclose your personal information without your consent, except where required or permitted by law. You may withdraw your consent at any time, recognizing that further assistance in resolving your complaint may not be possible.

#### 4. Limiting our collection of personal information

We will collect personal information only to the extent necessary for our identified purposes, and only if it is reasonable and appropriate in the circumstances.

#### 5. Limiting our use, disclosure and retention of personal information

The CBO will only use or disclose your personal information for the identified purposes for which it was collected, except where required or permitted by law. We will destroy your personal information in our possession when it is no longer necessary for the purposes for which it was collected and it is no longer legally necessary for us to have the information to respond to issues that may arise later.

#### 6. Keeping your personal information accurate

It is in your best interest that the personal information we hold about you is accurate, complete and up to date. If you believe that your information may be inaccurate, we will make it easy for you to access, verify and update. Please contact us by telephone or in writing using the information below.

#### 7. Safeguarding your information

We take steps to protect your personal information against theft, misuse and unauthorized modification and have implemented policies regarding retention and destruction of your information.

#### 8. Making our privacy policy information available to you

Our privacy policies and procedures are available to you, upon request.

#### 9. Providing you with access to your personal information

You have the right to request access to your personal information in our possession. However, in some circumstances, we may not provide you with personal information provided to us by your financial institution in the course of our dispute resolution process. We will ask you to contact your financial services provider directly. To request access to your personal information, please contact us by telephone or in writing using the information below.

#### 10. Handling your questions or complaints

If you have questions or complaints about this privacy statement, please call our toll-free number 1-888-451-4519. If your question or complaint is not resolved, please write to the Ombudsman, Canadian Banking Ombudsman, 4950 Yonge Street, Suite 1602, Toronto, Ontario, M2N 6K1.



# CASE COMMENTS

In the following cases, names have been altered to protect the privacy of the individuals and organizations involved. The individuals have consented to the use of these cases on an anonymous basis.

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## CASE #1

**The following case shows the importance of customers monitoring and reviewing account statements carefully so that errors can be detected and brought to the bank's attention in a timely manner.**

### CASE:

The customer asked his bank branch to arrange for the transfer of third-party mutual funds into a mutual fund account he was opening at the bank's discount brokerage. The bank officer asked the customer to sign the appropriate transfer forms in blank while he was at the branch, intending to fill the details in later. In doing so, the banker made an error and completed the forms to make the transfer "in cash" instead of "in kind," as the customer had requested. The customer began to receive account statements from the discount broker that showed cash in the account, instead of the mutual funds. It wasn't until 19 months after the transfer that the customer contacted the bank to complain about the error, claiming that if the mutual funds had been transferred and held they would be worth \$11,000 more than the cash. The bank

admitted its error and offered to pay the customer half of the \$11,000.

### OMBUDSMAN:

The Ombudsman agreed that the bank had erred but it also agreed that the customer had contributed to his own loss. The Ombudsman pointed out that the customer had a responsibility to monitor and review his account statements and indicate any problems to the bank in a timely manner. By doing so, the customer would have mitigated the loss, or avoided it entirely. The account statements were clear and, in fact, asked customers to review and notify the bank promptly in case of error. The customer had good investment knowledge and would have recognized the error had he reviewed the statements. The Ombudsman decided the bank's offer to pay half the loss was reasonable.

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## CASE #2

**This case illustrates why customers must be vigilant in reviewing the detail on their monthly credit card statements to verify all charges.**

### CASE:

The customers — a husband and wife — received a telephone call from a telemarketer who was calling on behalf of their bank.

The wife said she learned for the first time that they had been paying for balance insurance on their bank credit card for 20 months and denied they had purchased the coverage. The bank said the husband had purchased the insurance in a telephone call from a telemarketer — and provided documents to back this up. The customers' card statements showed a specific charge for the insurance for each of the 20 months. The customers told the bank they had not read the statements carefully and, despite making the minimum monthly payments, had failed to notice the recurring charges. Further, they told the Ombudsman that they read only the summary portion of the statement — not the individual line items. Over the 20 months, the customers paid \$1,185 for the insurance.

When the customers demanded reimbursement, the bank denied the claim, saying the sale was properly made, the charges were clear, the coverage had been paid for and the customers had benefited from the coverage during the 20 months. As a goodwill gesture, the bank offered to refund three months of premiums.

**OMBUDSMAN:**

The Ombudsman was satisfied the customers had indeed purchased the insurance. He concluded the customers had erred by not reviewing the card statement in detail and that the bank's offer was reasonable under the circumstances.

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**CASE #3**

**This case shows how an error made in a stock symbol was compounded and made more costly by the failure of the investment advisor to admit an error and to correct it.**

**CASE:**

When the complainant moved her portfolio to the bank's full-service investment broker, the investment advisor discussed the purchase of stocks such as Bombardier, McDonald's Corp., TD Bank, and the pharmaceutical firm, Merck & Company (Merck). When the customer received a confirmation slip the following month for the purchase of Merkert American Corp. (Merkert) for US \$30,000, she called the advisor for clarification because she was unfamiliar with Merkert. At first, she was told that Merkert was a small drug company – but the next day, she received another call saying that, in fact, it was a grocery marketing company. The customer expressed discomfort with the purchase but was encouraged to hold it because of

its "good potential".

After doing some research of her own, the complainant learned that Merkert was merging with another company – something the advisor had neglected to mention. Merkert is listed as MERK on the NASDAQ and Merck, the pharmaceutical firm, is listed as MRK on the NYSE. Four months later, convinced the advisor was covering up an error of purchasing the wrong stock, the customer moved her portfolio to the discount brokerage arm of the same bank. By this time, Merkert had lost a third of its value. Eight months later, she sold the remaining shares, by which time the stock had plummeted for a total loss of US \$21,000.

**OMBUDSMAN:**

The Ombudsman decided that the evidence pointed to an error in stock symbols, compounded by being defended, rather than admitted. The advisor typically recommended bank stocks and corporate preferred bonds. He had notes in the customer's file concerning the stocks discussed and recommended, with the exception of Merkert. Further, the advisor had not purchased Merkert for any other client and had no industry research or notes to support a recommendation and purchase for this stock. The Ombudsman recommended compensation for the customer up to the date when she transferred her portfolio to the discount broker – at which time she became fully responsible for her investment decisions.

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**CASE #4**

**This is a story of how a student loan customer lost his interest rate argument against a bank because a computer detailed all the communication and backed up the bank's claim of neglect on the part of the customer.**

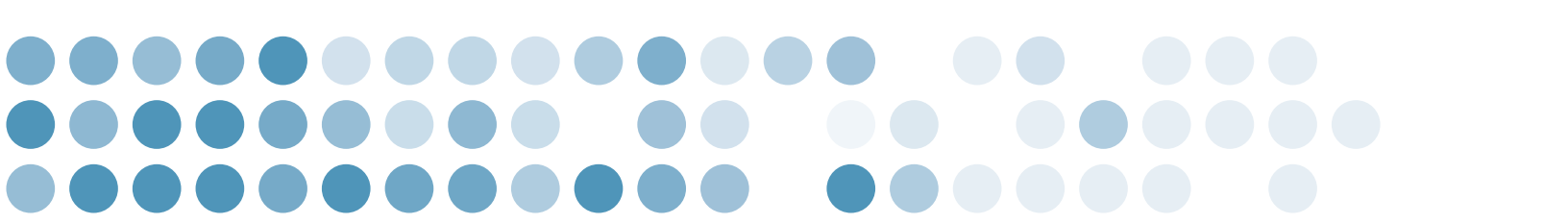
**CASE:**

An unemployed complainant wanted interest relief on both his federal and provincial student loans. The relevant papers were provided, and the customer's federal student loan interest relief application was approved. However, the customer said he did not receive the provincial interest relief application – this despite his many requests and the bank's assurances that it had been mailed. Further, he claimed that four months later a bank employee promised to eliminate most of the provincial student loan interest arrears, provide interest relief for the coming month, and mail another interest relief application. Again, the customer said the application was not received. The loan was transferred to a government collection agency.

The bank refused the customer's request to take back the loan from the government and eliminate most of the interest. The bank said its records did not correspond to those of the student's, nor did they contain evidence of any administrative error, the only basis upon which the bank could have requested the loan to be returned from the government.

**THE OMBUDSMAN:**

We supported the bank's position. Calls made in and out



of the bank student loan offices are logged on computer databases and routinely reviewed in our investigations. In this case, detailed records showed the dates that three provincial interest relief applications had been mailed, many unanswered telephone messages from the bank following up the applications, a call from the complainant indicating that the second application had been received and would be returned – and no reference to reduction in the interest arrears.

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### CASE #5

**This case illustrates how crucial it is to protect your bank card and PIN number because they are as good as cash.**

**CASE:**

The customer used her bank card at an automated banking machine (ABM) to pay some bills. After paying the bills, she left the ABM – without removing her card or terminating her ABM session. The message on the screen asked if she wanted to do another transaction – yes or no. The next person to use the machine selected “yes” and was given direct access to the account. A maximum daily withdrawal of \$400.00 was made.

**OMBUDSMAN:**

We decided the customer had failed to protect her bank card and PIN number and was therefore responsible for the loss.

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### CASE #6

**This case shows a bank’s responsibility to fully advise a customer on how to terminate a joint liability agreement on a credit card.**

**CASE:**

The customer was the secondary cardholder on her husband’s credit card account and had signed an agreement stipulating that she was jointly liable for all debts incurred on the account. When the couple divorced, she told the bank that she no longer wanted to use the credit card. The customer said she was advised to tear it up and throw it out. The bank denied this. Meanwhile, her husband loaded the credit card and declared bankruptcy. The bank pursued the customer for the debt, which had been incurred entirely by the husband after the divorce.

**OMBUDSMAN:**

When the Ombudsman investigated, the bank confirmed that the customer had, indeed, gone to her branch and requested information on what to do with the credit card. The Ombudsman discovered the bank had failed to mention the joint liability on the account and that it should have advised the customer that tearing up the card would not terminate the joint liability agreement. She would remain jointly liable for all debts on this account until she notified the bank that she was terminating the agreement. In this case, the bank cleared the customer’s debt and amended her credit bureau report.

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### CASE #7

**This case shows how a bank gave a husband and wife incorrect information about the timing of withdrawals from their RRSPs for a house down payment. The bank was responsible for compensating them for the resulting tax penalty.**

**CASE:**

In May 1998, a customer and his wife met their financial advisor to tell him they had made an agreement with a homebuilder to have a new house built within a year. They said they would need to withdraw money from their RRSP Home Buyers Plan (HBP) to make a down payment in 1998 and that they would have to make another withdrawal for the closing date the following year, in May of 1999. The advisor said the withdrawals would qualify under the plan because both the customer and his wife were allowed \$20,000 each in RRSP withdrawals towards the purchase of a first house.

The advisor did not tell them that, under the terms and agreements of the Home Buyers Plan, withdrawals can only be made in one calendar year. As a result, the amount withdrawn in 1999 was considered to be a regular RRSP withdrawal and therefore deemed to be taxable income for that year.

**OMBUDSMAN:**

The Ombudsman recommended the bank pay 90 per cent of the customer’s loss, recognizing that the customer had some knowledge of the situation and responsibility for it.

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### CASE #8

**This is the story of a small businessman who failed to obtain proper legal advice when his company was first established and eventually lost everything – including his claim against the bank.**

**CASE:**

Black Inc. was incorporated, with Mr. Smith and Ms. Taylor as 50 per cent shareholders and Ms. Taylor as the sole director. A bank account was set up – Mr. Smith was to provide all the funds and Ms. Taylor was to provide the business contacts. Two signatures were required on cheques. Mr. Smith believed he was protected. Months later, the signing authorities were changed without Mr. Smith’s knowledge or approval. Only Ms. Taylor’s signature would be accepted on cheques. Mr. Smith was denied access to the company’s bank accounts and the company failed.

Because Mr. Smith had warned the bank of Ms. Taylor’s inappropriate financial behavior, he asked to have the account returned to him with his initial deposit intact. He believed the bank had a duty to tell him he was making a mistake, that the company could be swept away from him by the sole director.

When the signing authorities were changed, Ms. Taylor provided legal advice confirming that she was still the sole director of the corporation. Under the Ontario Business Corporations Act, the directors of a company are authorized and obliged to manage, or supervise the management of the business and affairs of the company. Therefore, Ms. Taylor had the authority to change the signing authorities, and as long as she had that authority the bank had to follow her instructions.

**OMBUDSMAN:**

The Ombudsman did not see how the bank had an obligation to Mr. Smith and was of the opinion that he had the responsibility to protect himself by obtaining legal advice when the company was established.

issued cheques. The bank had no reason to suspect illegal activities.

It is standard in the banking industry for a bank to have a “verification agreement” with its customer – and the Courts have supported these agreements. Since banks are able to contract out of liability, to the extent that their agreements clearly allow, the Ombudsman looked at the company’s Business Banking Agreement. It said the bank would not be liable for damages from a forged or unauthorized signature, or from a material alteration of a cheque, unless the company could prove that this was done by a person who was never a company agent and that its occurrence was beyond the company’s control.

The bookkeeper was an agent of the company. Further, procedures were not in place to prevent and detect losses due to altered cheques. The bookkeeper was able to forge Mr. Jay’s signature on several cheques made payable to himself. After the cancelled cheques were returned, the bookkeeper altered those cheques so that each had Mr. Jay’s actual signature on it and a payee that was a valid company supplier. Mr. Jay was then presented with photocopies of the bank statement and the cancelled cheques.

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### CASE #9

**This case illustrates how an unscrupulous bookkeeper was able to defraud a company by altering cheques and forging signatures. The bank could not be held responsible because of terms of the business banking agreement with the company**

**CASE:**

Within a period of three months, Jay Fashions Inc. lost approximately \$10,000 when fraudulent cheques cleared its bank account. Mr. Jay believed the bank’s clearing system should have rejected the cheques because they had been materially altered and bore fraudulent signatures. It turned out that a freelance bookkeeper working for the company had fraudulently

**OMBUDSMAN:**

The Ombudsman agreed with the bank and did not make a recommendation in favor of the company.

## CASE #10

**This case illustrates the importance of guarding access to personal cheques. A bank was not willing to repeat a goodwill gesture the second time around.**

### CASE:

In March of 2000, a daughter stole and forged cheques belonging to her parents worth \$888. As a goodwill gesture, the bank reimbursed this amount to the parents. Four months later, in July of 2000, the daughter once again stole and forged cheques – this time worth \$3,100. The parents expected to be reimbursed by the bank a second time.

The bank's Customer Agreement requires customers to prove that they took all reasonable steps to prevent forged or unauthorized signatures and despite this, the loss was unavoidable. In this case, the cheques disappeared at about the time the parents were moving to a new house. One of the parents told the bank that arrangements had not been made for a lock on the parents' bedroom door.

### OMBUDSMAN:

Although the parents brought the matter to the attention of the bank within the required 30 days, the Ombudsman agreed that they did not take all reasonable steps to protect their cheques the second time around.

## CASE #11

**This case shows how an investment advisor did not conduct the “know your customer” test properly on a client and, as a result, failed to match the investment portfolio to the customer's profile. The claimant's silence made things worse.**

### CASE:

A 58-year-old customer divorced her bank manager husband and received half his pension accrual – \$172,000. With no banking or investment experience and few other assets to support herself in retirement, the customer decided to set up a meeting early in the summer of 2000 with her local branch manager in order to get some help with investing her money. The manager referred her to an investment advisor with the bank's investment subsidiary.

The customer met with the advisor on three occasions and, after much discussion, the advisor presented the customer with an investment portfolio she believed was suitable to the customer's needs. Five months later, the customer was shocked to discover that the value of her investment portfolio had gone down to \$156,000. She claimed that she had made it very clear to the advisor from the start that she did not want to risk her capital under any circumstances because of her situation. In the opinion of other investment specialists consulted by the customer, the investments purchased met an

“ambitious” profile. The customer requested that all transactions done since the opening of her account be cancelled. The advisor admitted that, with the exception of GICs, the customer did not have much investment knowledge and did not seem to understand information such as risk tolerance questions. Although the advisor said she built a portfolio that was not too risky, she invested a good part of the funds in the higher risk technology and telecommunications sector.

### OMBUDSMAN:

The Ombudsman said that investment advisors have an obligation to operate by the Know Your Customer rule, that is to fully understand the needs and risk tolerance of a customer. This was not properly done in this instance. The customer's portfolio did not match her profile. The Ombudsman recommended the bank reimburse part of her losses — but not all — since the customer admitted that she had not understood the explanations given to her by the advisor but had stayed silent.

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