

Canadian Banking Ombudsman Inc.



Annual Report 1999

awareness
independence
fairness

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Canadian Banking Ombudsman Inc. is an independent organization that investigates complaints that “customers” - individuals and small businesses - have about services provided by member bank financial groups. Our goal is to provide fair, impartial and prompt resolution of complaints, applying both good business and good banking practices.

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.

Message from the Chair of the board of directors



Peggy-Anne Brown
President
Brown Crawshaw Inc.
Vancouver

Independence is critical to the effectiveness of the office of any ombudsman, regardless of jurisdiction or sector. An ombudsman must be able to make judgments and influence an organization's decision-makers. This can only be accomplished if the ombudsman has the power to make decisions impartially without interference from the organization's board of directors or any other body.

Since its formation in 1996, the role of the Canadian Banking Ombudsman (CBO) has evolved as a result of changes in the organization's governance structure, By-laws, and Terms of Reference. Led by the actions of the Board of Directors, the scope of the services and products subject to the CBO's jurisdiction has been continuously enhanced and expanded. Changes to the structure of the CBO Board of Directors ensure greater protection of the Ombudsman's independence. The CBO's governance structure is described in detail elsewhere in this Report.

ROLE OF THE CBO IN FINANCIAL SECTOR REFORM

Financial sector reform has been widely debated over the past few years. The Ombudsman and I have been involved in discussions with numerous groups, including committees of the Senate and Parliament, the Department of Finance, and the Minister of Finance. We have made formal submissions on the topic of financial sector reform and the role of the ombudsman. Our discussions and written submissions have focused on the strengths of the CBO's structure (particularly when compared to other countries) and the need for a comprehensive private sector ombudsman with a mandate extending across the financial services sector providing seamless coverage for consumers.

The response to our submissions has been positive. For example, in September 1997, the Ombudsman and I met with, and made a formal submission to, the Task Force on the Future of the Canadian Financial Services Sector (MacKay Task Force). In its final report the Mackay Task Force endorsed the single ombudsman concept stating, "It would be a step backward to establish separate ombuds offices for each of the former pillars." In June 1999, Finance Minister Paul Martin released a policy paper on *Reforming Canada's Financial Services Sector*. In the paper, the Finance Minister called for the creation of a new body - the Canadian Financial Services Ombudsman (CFSO). The paper stated that the CFSO would be independent of both the government and financial institutions and would be designed to accept all financial institutions as members. The Finance Minister has recommended that membership in the CFSO be mandatory for banks and the Minister urged that insurance, credit unions/caisses populaires and the investment sector participate.

The Board of Directors of the Canadian Banking Ombudsman Inc. will continue to strongly support the single independent ombudsman concept for the financial sector because we believe it will provide the broadest and most accessible avenue for dispute resolution for consumers and small businesses that have complaints against financial services providers. A single independent ombudsman for all financial sectors would ensure consistency on a national basis for customers that have not been dealt with fairly by a financial institution or service provider.

I would like to thank the members of the Board of Directors for their support and vision throughout this period of development of the CBO and for the Board's ongoing commitment to ensuring quality, independent investigations of customer complaints. I would also like to thank the Ombudsman, Michael Lauber, for his leadership and Michael and his staff for their hard work and dedication to customer fairness.

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

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The Year in Review — The Canadian Banking Ombudsman's Statement



Michael Lauber
Canadian Banking Ombudsman

During the past year we dealt with a number of very interesting cases and I am pleased to say that some of them have led to changes in individual bank policies and procedures, as well as to changes in our approach. Case Commentaries and Summaries are included elsewhere in this Report, giving you a flavour of the types of situations our office routinely considers.

REFINING THE PROCESS

After three and one-half years of assisting customers of member banks, the ombudsman process has evolved. Initially, the mandate of the Canadian Banking Ombudsman Inc. was to investigate and resolve the complaints of small businesses. During our first year our mandate was expanded to include complaints from individuals - now these complaints comprise 85% of our work. The range of products and services we now investigate has expanded to include all those provided by member bank financial groups, including traditional banking transactions and lending, wealth management products (including securities and mutual fund transactions), insurance and trust services.

Interestingly, though our mandate has grown and awareness of the CBO has increased, the number of complaints to the Canadian Banking Ombudsman and to the banks' ombudsmen has remained steady or has declined. One reason for this could be that member banks have improved their practices. As well, the fact that we are seeing fewer of the more straightforward issues is perhaps evidence of the fact that many such issues have been addressed by the banks. As a result, the complaints we receive tend to be more complex and frequently involve the application of judgment in situations where good banking practice is not well defined. As well, there are an increasing number of complaints regarding investment transactions, suitability of investments and discount broker transactions.

Some have commented that the number of complaints we resolve in favour of customers seems low (27% in 1999). In response, I would simply point out that if you consider that our customers are limited to those whose complaint has not been resolved by their internal bank ombudsman and that our experience has shown that, by and large, the internal bank ombudsman system works, the figure is not particularly low. Indeed, the figure could be interpreted as proof that the entire ombudsman process is working because internal bank ombudsmen realize that working to keep this number relatively low is the best proof that the banks are focussed on resolving customer complaints and ensuring that bank problems that may have led to the complaints in the first place are remedied.

TIMELINESS

Over the years it has become quite apparent that timeliness in resolution of matters is very important to bank customers. As a result, we try to investigate complaints as promptly as possible. In fact, one of our focuses this past year was in reducing the time it takes to complete an investigation and report back to the customer. I am very pleased with the significant progress we have made in reducing our turn-around time.

LEARNING FROM OTHERS' EXPERIENCE

Last year I participated in the first-ever Bank Ombudsman and Financial Schemes Conference held in Australia, along with financial sector ombudsmen from Australia, New Zealand, and Ireland. Participation in the Conference provided first-hand understanding of the ombudsman process adopted in various financial sectors of different jurisdictions. In Australia, the U.K. and other countries, for example, customers are encouraged to contact the industry ombudsman if they have a complaint, rather than to go to their bank first. In contrast, the Canadian system is designed to put primary responsibility on the banks to deal with customer complaints.

The Conference provided an opportunity to learn about changes and restructuring the financial services industry is undergoing in various countries. As well, the Conference focused on operating processes and best practices. The group plans to establish an association of financial services ombudsmen, allowing for continued sharing of information and experience concerning the alternative dispute resolution methods applied by ombudsmen.

WHERE ARE THINGS HEADED?

We are hopeful that agreement can be reached and that all types of financial institutions will come together to create a single, independent ombudsman for customers of all such institutions in Canada. This would facilitate consistency in resolving disputes and would provide access for all consumers and small businesses. The overall visibility and understanding of the ombudsman process would also be enhanced by the existence of a single ombudsman for all financial sectors.

I would like to thank my colleagues for their efforts during the year and their consistent commitment to fairness in evaluating customers' complaints and the banks' actions. I would also like to thank the members of the Board of Directors, in particular Dr. Peggy-Anne Brown and the other independent directors, for their continued commitment to the Office and the future direction of the ombudsman process during this period of reform in the financial services industry.

I invite you to visit our web site at: www.bankingombudsman.com. The site includes our Terms of Reference, copies of our submissions to government committees and task forces, comparative information on the structure and operation of other ombudsman processes, and current and historical CBO statistical data.

*Michael Lauber, FCA
Canadian Banking Ombudsman*

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How The Canadian Banking Ombudsman Works

MEMBER BANKS

Amex Bank of Canada
Bank of Montreal
Canadian Western Bank
Canadian Imperial Bank of Commerce
Citibank Canada
HSBC Bank Canada
ING Bank of Canada
Laurentian Bank of Canada
National Bank of Canada
Royal Bank Financial Group
Scotiabank
TD Bank Financial Group

WHAT THE CANADIAN BANKING OMBUDSMAN DOES

Canadian Banking Ombudsman Inc. is an independent organization established to help individuals and small businesses resolve disputes with their bank or any of its subsidiaries, if they have been unable to settle the matter with their bank.

Every member bank has a complaint resolution process that includes its own ombudsman. If the bank ombudsman's resolution of a matter is unacceptable to the customer, within six months of the conclusion of the bank ombudsman's review the customer can bring a complaint to the Canadian Banking Ombudsman (CBO).

ACCESSING THE OMBUDSMAN PROCESS

Every member bank has a brochure explaining its complaint resolution process, how to contact its bank ombudsman and the CBO. Customers can access their bank's ombudsman or customer service department through the CBO's toll-free telephone number. There are also links to each member's web site from the CBO's web site: www.bankingombudsman.com.

WHAT THE CBO INVESTIGATES

The CBO investigates complaints that fall within its Terms of Reference. The CBO is empowered to investigate a wide range of banking complaints with the exception of the general pricing of bank products and services and the credit granting policies of banks, or issues that have been, or are, before the courts. Details about what the CBO investigates can be found elsewhere in this Report.

LEGAL RIGHTS

Customers do not surrender their legal rights by participating in the CBO process. To ensure the parties' full cooperation and openness during the ombudsmen process, the parties sign an agreement that the files of the CBO and the discussions between the CBO, the customer and the bank may not be used in any subsequent legal action.

A SIMPLIFIED COMPLAINT PROCESS

A customer may contact the CBO by telephone or in writing. Services are available in English and French, and interpreters can be provided for other languages, as needed.

Once the CBO has confirmed that a complaint falls within the Terms of Reference and that the ombudsman process at the bank has been completed, the customer is asked to sign a letter of understanding. This is a plain-language agreement between the customer, the bank, the CBO and any other parties involved in the dispute. The agreement explains the process and authorizes the bank to release to the CBO confidential financial information about the customer.

By design, the CBO's complaint resolution process is not rigidly structured. Usually relevant information is gathered and reviewed, with the Ombudsman making a recommendation. Occasionally we resolve complaints by facilitating a meeting between the bank and the customer.

RECOMMENDATIONS

When making a recommendation, the Ombudsman considers fairness and good business and good banking practices. In many areas, the banking industry and individual banks have codified their standards of performance and service. Such codes are useful benchmarks when trying to determine what constitutes good banking practices.

Neither the customer nor the bank is bound by the Ombudsman's recommendation, however, in the event a bank does not comply with a recommendation, the CBO is required to report publicly the name of the bank. To date, the member banks have accepted all of the CBO's recommendations.

The Ombudsman must report the number of complaints brought to the CBO regarding each bank, the results of the CBO'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.

Our commitment to investigating in good faith and to making recommendations based on fairness and good banking practices, bolstered by the requirement that we must publish the names of banks that do not accept a recommendation, combine to create an effective dispute resolution mechanism for most individuals and small business customers.

THE OMBUDSMAN AND THE MEDIA

The Ombudsman does 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.

What the CBO Can and Cannot Investigate

The CBO accepts complaints from customers (both individuals and small businesses), utilizing the skills and power of the Office to bring a fair resolution to customers' complaints. The types of complaints the CBO may consider are set out in our Terms of Reference, which have been adopted by the Board of Directors in accordance with our by-laws. For example, the CBO can only investigate complaints from bank customers in their role as customers. This means, for example, that the Ombudsman cannot investigate complaints involving bank suppliers or bank employment practices, even if the supplier or employee happens to be a bank customer.

Generally speaking, in interpreting the Terms of Reference we try not to apply overly rigid definitions that might cause us to have to decline a complaint we believe should be investigated. For example, we do not have a threshold over which a business might not be considered a "small business". There are certain complaints, however, that we cannot investigate. In such circumstances, whenever possible, we try to direct the customer to someone or some place where the matter ultimately might be resolved.

What we will investigate is also limited, to some extent, by policies we have adopted. The following are some examples of types of complaints we will not investigate, as well as an explanation of why we will not investigate them.

PRICING OF BANK PRODUCTS

The Ombudsman does not investigate complaints about the general pricing of products and services, such as interest rates, service charges, credit card charges, etc., because they apply to all customers of the bank and are not unique to any single customer.

LENDING AND OTHER RISK MANAGEMENT POLICIES

The Ombudsman does not consider complaints about the exercise of the legitimate commercial judgement of a financial institution. For example, the Ombudsman will not question the fair application of a bank's risk management policies or lending criteria. However, complaints concerning a process failure involving the granting or collection of a loan can be investigated, including, for example, inadequate evaluation of a loan request or bias in the evaluation.

MATTERS BEFORE THE COURTS

The Ombudsman will not accept a complaint where the matter has already been considered by the courts, since it is not the position of the Ombudsman to second-guess the courts. The Ombudsman may also decline to investigate a complaint where the legal process has commenced or where it is being, or has been, dealt with under a comparable independent dispute resolution process. In most cases, before making a decision on whether to accept a complaint, we require information about the extent to which the matter has been subject to dispute resolution.

MATTERS BEST HANDLED ELSEWHERE

In circumstances where the Ombudsman believes a matter is more properly dealt with by the courts, the Ombudsman may so advise the customer and decline to consider the matter. For example, where a third party is involved in a transaction, the Ombudsman may decline to consider the complaint because the Ombudsman cannot compel information from third parties and

Enhancing public awareness of the CBO

a proper investigation would compromise the privacy of such parties without their consent. In such cases the Ombudsman may advise the customer to take the matter to court, since a court has power to compel information.

The Ombudsman will not investigate a complaint brought by a collective group of customers of a bank (similar to a group that might bring a class action law suit) because the ombudsman process is designed to resolve individual consumer complaints. Such complaints are usually best heard elsewhere, for example, in court through a class action law suit.

WHERE NO RESOLUTION IS POSSIBLE

The Ombudsman has the authority to decline complaints, or to terminate the investigation of a complaint, where the Ombudsman considers a matter is frivolous or vexatious, or if there is clearly no reasonable prospect of success. For example, the Ombudsman has closed files where the customer has demanded compensation that is measurably beyond any amount the Ombudsman considers fair in the circumstances and where the customer's position was so inflexible as to make resolution impossible.

Another category of claims we generally do not investigate relates to bank customers who find old pass-books, receipts for GICs, and term deposits and whose request for funds related to those accounts or instruments is denied by their bank because bank records no longer exist. Generally, banks are only required to keep records for six years and therefore when a claim is beyond the relevant statutory time that a bank is required to keep a record, the Ombudsman considers such claims irresolvable.

An on-going objective of the CBO is making small businesses and consumers aware of the Canadian Banking Ombudsman and of the ombudsman processes established at each of the member banks. Substantial progress has been made in this regard. For example, a March 1998 consumer survey by the Task Force on the Future of the Canadian Financial Services Sector showed that, one year after the CBO began providing services to consumers, approximately 40% of Canadians were aware of the ombudsman process within the financial sector. Given the increased publicity the CBO has received since the time of that survey, we believe the awareness level today is substantially higher.

One of the primary ways awareness of the ombudsman process and the CBO has been increased is through public speeches by, and interviews with, the Ombudsman. In the past year, the Ombudsman spoke across Canada and was interviewed numerous times for TV, radio, newspapers and magazines. Meetings and information sessions the CBO has with politicians and consumer organizations also present opportunities to enhance public awareness. Also, the awareness level has been raised by reference to the CBO in numerous newspaper articles by consumer and business writers, particularly in connection with the topic of financial sector reform.

The CBO's bilingual interactive voice response system is another avenue through which information about the ombudsman process and the CBO is made publicly available. Callers can hear about the CBO and its mandate, as well as instructions about how to bring a complaint to the CBO. The system also allows customers to transfer directly to their bank ombudsman in cases where they have not already completed the internal bank ombudsman process.

Another popular means of getting information about the CBO is our web site (www.bankingombudsman.com). Last year the site received nearly 20,000 page hits. On the site readers can find a description of the CBO's mandate, a complete list of member banks, a list of members of the Board of Directors, copies of various reports and submissions made by the CBO, and quarterly and annual reports.

Internationally, the profile of the CBO and the Canadian banks' ombudsman process was raised when the Ombudsman met with financial sector ombudsmen from Ireland, New Zealand and Australia at a conference hosted by the Australian Banking Industry Ombudsman in March 1999.

1999 The Year in Review

In the year ended October 31, 1999, 1,083 (969) (figures in brackets represent amounts for the year ended October 31, 1998 and are given for comparison) individuals and small businesses contacted the CBO for information on how to lodge a complaint with their bank or with the CBO. Many people who contact the CBO simply want to discuss their concerns with someone knowledgeable and independent, so they can determine whether they should pursue their complaint. If a customer has not had the complaint investigated by their bank and the bank's ombudsman, we direct them to the appropriate person at their bank.

In 1999 we commenced 171 (173) investigations and completed 194 (156) cases. Of those 194 cases, we made recommendations in favour of the customer in 27% (23%) of them. At the end of fiscal 1999 we had 32 (55) cases under investigation, 11 of which were more than three months old.

The number of complaints to the internal bank ombudsmen has been declining over the years. The individual ombudsmen investigated 2,279 (2,689) complaints in fiscal 1999. Of those complaints, in 48% (48%) of the cases the bank ombudsmen concluded that the customer's complaint was completely justified, providing the redress the customer sought. In an additional 20% (21%) of those cases the complaints were settled by awarding the customer some of what they were seeking. The banks attribute the decline in total number of complaints to improved services, resulting from a greater emphasis on customer service training of employees and from focusing on addressing the concerns of the customer at the branch level or at the source of the complaint.

STATISTICAL OVERVIEW FOR THE YEAR ENDED OCTOBER 31, 1999

	Canadian Banking Ombudsman		
	Personal	Small business	
COMPLAINTS AND INQUIRIES RECEIVED	936	147	
COMPLAINTS RESULTING IN INVESTIGATIONS	141	30	
THE NATURE OF THE COMPLAINTS WERE AS FOLLOWS:			
Account and transactions	32%	27%	
Card services	6%	3%	
Fees and charges	4%	0%	
Credit - new or changed terms	9%	23%	
Credit - collections	16%	41%	
Privacy and confidentiality	3%	3%	
Service and advice	16%	0%	
Tied selling	0%	0%	
Other selling practices	0%	0%	
Other	14%	3%	
	100%	100%	
INVESTIGATIONS CONCLUDED IN THE PERIOD	159	35	
THE RESULT OF THE CANADIAN BANKING OMBUDSMAN'S REVIEW WAS:			
We recommended that the bank take action in favour of the customer, which was followed in each case	25%	34%	
We found the bank's action appropriate in the circumstance	75%	66%	
OMBUDSMAN'S ASSESSMENT OF COMPLAINANTS REACTION⁽¹⁾:			
Agreement was reached	22%	26%	
Partial resolution of the complaint was achieved	15%	6%	
No agreement reached	63%	68%	
Complaints resolved within 20 business days	9%	26%	
Complaints under review at end of year	24	8	

Individual Bank Ombudsmen		
Personal	Small business	
1,966	313	
27%	22%	
10%	5%	
6%	4%	
9%	26%	
18%	31%	
2%	1%	
19%	5%	
0%	0%	
1%	0%	
8%	6%	
100%	100%	
1,977	305	
(not applicable)		
49%	42%	
20%	22%	
31%	36%	
77%	69%	
96	21	

COMPLAINTS TO THE CANADIAN BANKING OMBUDSMAN IN THE PERIOD WERE FROM CUSTOMERS OF THE FOLLOWING BANK FINANCIAL GROUPS:

	Personal	Small business
Amex Bank of Canada	2	0
Bank of Montreal	26	10
Canadian Western Bank	0	0
Canadian Imperial Bank of Commerce	30	4
Citibank Canada	1	0
HSBC Bank Canada	3	0
ING Bank of Canada	2	0
Laurentian Bank of Canada	5	0
National Bank of Canada	13	5
Royal Bank Financial Group	26	7
Scotiabank	12	2
TD Bank Financial Group	21	2
	141	30

EXPLANATORY NOTES TO REPORT ON ACTIVITIES

(1) 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.

MEMBERS

The Canadian Banking Ombudsman Inc. is a not-for-profit corporation. Currently 12 banks are members. Costs are shared among the member banks based on their relative size, as measured by their total assets.

Membership is available to all banks and deposit-taking financial institutions (for example, trust companies and credit unions) doing business in Canada. Domestic and foreign non-bank financial institutions that provide asset-based lending, leasing, mortgages and credit cards may also join.

BOARD OF DIRECTORS

The Board of Directors of the Canadian Banking Ombudsman Inc. is composed of six independent directors and five directors who are senior bank executives. The Board is chaired by an independent director and meets a minimum of four times a year. The principal roles of the Board of Directors are to:

- guarantee the independence of the Ombudsman;
- create public confidence in the process; and
- ensure that the organization is well managed and appropriately funded.

The Board has the authority to:

- appoint the Ombudsman and establish the terms of office, including remuneration;
- approve the budget;
- assess member fees; and
- terminate the Ombudsman.

The Board may also amend the By-laws and Terms of Reference, subject to ratification by member banks.

INDEPENDENT DIRECTORS' COMMITTEE

Independent directors constitute a majority of the Board. They act as a committee of the Board and have special powers to safeguard the independence of the Ombudsman. The Board may not dismiss the Ombudsman without the unanimous approval of the independent directors. They review and recommend candidates for Ombudsman; act as the nominating committee putting forward candidates for independent directors; review and make recommendations to the Board regarding the budget; and act as the audit committee. Independent directors are elected for a three-year term and may be re-elected.

THE OMBUDSMAN

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

INDEPENDENT DIRECTORS

Peggy-Anne Brown (Chair)
President, Brown Crawshaw Inc.
Vancouver, British Columbia

Dr. Brown, a psychologist, owns and operates a company specializing in employee and family assistance programming and critical incident debriefings.

The Hon. Lincoln Alexander
Chancellor of the University of Guelph
Hamilton, Ontario

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, Saskatchewan

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

Daniel F. Gallivan
Partner, Cox Hanson O'Reilly Matheson
Halifax, Nova Scotia

A partner with Cox Hanson O'Reilly Matheson, Barristers and Solicitors, Mr. Gallivan specializes in corporate commercial and securities law and has served as Vice Chair of the Nova Scotia Securities Commission.

James R. Savary
Associate Professor and Chair, Department of Economics, York University
Toronto, Ontario

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

Jean-Marie Toulouse
Director, École Des Hautes Études Commerciales
Montreal, Quebec

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

Bruce R. Birmingham
President
The Bank Of Nova Scotia
Toronto

Gordon J. Feeney
Deputy Chair
Royal Bank of Canada
Toronto

J. Duncan Gibson
Vice Chair
Commercial Banking
Toronto Dominion Bank
Toronto

Ron G. Rogers
Vice Chair
Personal Commercial & Financial Services
Bank of Montreal
Toronto

Henri-Paul Rousseau
President & Chief Executive Officer
Laurentian Bank of Canada
Montreal

Though the complaints we receive are quite varied, over the years we have noticed many complaints can be grouped under certain headings. Here are some of the common, or more persistent, issues we have dealt with over the past year, as well as a description of some individual complaints.

The importance of customer vigilance

The dictionary defines vigilance as "watchfulness, caution and circumspection". There are a surprising number of cases where customers simply are not vigilant when dealing with banks or financial partners. There is little we can do if a problem stems from a lack of vigilance on the part of the customer.

Below are examples of some types of complaints where we could not make a recommendation to the bank because the customer did not act vigilantly in dealing with his or her bank or financial partner. Recommendations for ways of being more vigilant are also offered.

Read carefully

Numerous complaints arise from customers' failure to read agreements and contracts carefully and from their failure to clarify points they are confused or concerned about before signing a contract. Obviously, any customer who is a party to any kind of agreement should read it carefully and ask questions before signing. Depending on the nature of the agreement and the nature of the questions, obtaining professional advice may also be appropriate.

Get agreements in writing

Customers often complain when their bank refuses to honour an agreement they believed they had with the bank. It is imperative that customers get agreements in writing, since memories of verbal commitments fade with time and can almost never be proven.

Attention to personal credit rating

Some customers do not pay careful attention to their personal credit ratings, which is unfortunate because personal credit ratings play a significant role in a bank's decision to lend. Customers should regularly review their credit ratings with Canada's two credit rating agencies and be pro-active in maintaining a good credit record.

Assumptions about personal guarantees

Customers sometimes give banks personal guarantees on the assumption that they will never have to honour them. Personally guaranteeing something is a commitment that should never be taken lightly, as the guarantee can have far-reaching consequences. Customers who are uncertain about their responsibility under a guarantee should get legal advice.

Protecting against cheque fraud

There has been a great deal of emphasis in the media about the risks of fraud related to credit cards and debit cards, and the need to protect personal identification numbers (PIN). But such fraud is not the only fraud about which bank customers should be concerned. Based on the complaints that customers bring to us, cheque fraud is still a very real problem that is too often overlooked.

A blank personal or business cheque that falls into the wrong hands can be forged and cashed. Given the large volume of cheques passing through the cheque clearing system each day, a fraudulent cheque may be paid. Account agreements with banks contain "verification clauses", requiring customers to review their bank statements on receipt and report any errors to the bank within 30 days. Under the terms of bank agreements with business customers, businesses also are required to maintain internal controls to safeguard their financial instruments and the use of them. Courts have routinely upheld the validity of verifi-

cation clauses and have denied customers' claims when the customer did not identify problems or did not inform the bank of errors in cheque processing within the required time frame. Customers should proactively protect themselves against fraud and business customers should ask their bank about products and services available to reduce the risk of being victimized by fraudsters.

We have investigated several cases of forged or fraudulent cheques involving business partners, employees and spouses who stole significant amounts of money over extended periods of time. In each case, if the customer had checked their bank statements and examined all cancelled cheques, the fraud would have been discovered sooner. But, because the customers did not examine the documents, their action enabled the fraud to continue and therefore the banks were not responsible for the losses.

Friends and relatives, not just strangers, can perpetrate financial fraud. In one case a woman living in a rural area gave her new

husband her banking PIN. She had a business account with a balance of \$7,000 and a personal account with a balance in excess of \$10,000. She rarely went into town, leaving her husband to pick up the mail and do the banking. In picking up the mail, he intercepted her bank statements. About three years passed before the customer's suspicions about her husband were aroused, at which point she went to the bank to check her accounts. She found that her husband had emptied both accounts, using her ABM card and forging her signature on cheques. She wanted the bank to reimburse her losses.

Unfortunately, there was nothing we could do for the customer in this case. It was the customer's responsibility to check her account statements on a monthly basis and to inform the bank of any discrepancies. The forged signatures had occurred over a three-year period. Furthermore, by giving her husband her PIN she violated the account contract, which stated that the PIN was not to be shared with anyone.

Fraud the bank should have noticed

Of course, there are cases where a fraud is perpetrated and the bank is liable. In one case, a customer sought compensation when a caregiver took \$15,000 from his bank account over a three month period by forging cheques and using his debit card. The caregiver then disappeared. The fraud occurred at a bank branch in a small town. On investigation, we concluded that the bank should have noticed the uncustomary activity in the account and the poor forgeries. We recommended that the bank reimburse the customer and the bank followed our recommendation.

In another case, when a customer went to withdraw money from an account in which he thought there were ample funds, he found the account was empty. Apparently an acquaintance had obtained his cheque book and had written a cheque for \$9,000 with a poor forgery of his signature. Furthermore, though the account on which the cheque was written contained only \$8,000, without the customer's consent the bank withdrew the \$1,000 shortfall from another account belonging to the customer, cashing the cheque without verifying the signature. As it turns out, the account from which the \$1,000 shortfall was withdrawn required two signatures for funds to be paid out. The customer notified the bank of the discrepancy within the 30-day notice period.

We recommended that the bank reimburse the customer the \$9,000, since the bank had not followed its own policies regarding signature verification and the customer had reported the problem within the time-frame specified in the verification clause. The bank followed our recommendation.

Privacy

Violations of customers' right to privacy is another area where we occasionally get complaints. In one case, the husband was inquiring about establishing a line of credit at a branch where he and his wife had a joint bank account and a joint mortgage. Because no formal application had been made, it was not clear whether the proposed line of credit would have been joint. Without her consent, the wife's credit bureau report was obtained and shown to her husband revealing a large credit card debt that the husband did not know about. The bank defended its actions saying all other bank transactions had been joint and therefore it presumed the line of credit would be joint too.

We recommended that the bank pay the customer \$3,500 for out-of-pocket expenses and lost wages in her year-long effort to resolve the matter before coming to the CBO and that the bank apologize for violating the customer's privacy. The bank followed our recommendation. The bank violated two of its credit bureau/privacy policies as well as the CBA Privacy Model Code when it showed a credit bureau report to a third party outside the bank and when it relied on a 10-year old consent it had on file rather than obtaining a new consent to obtain a credit report.

In another case, a customer applied for an RRSP loan over the phone. The customer was asked who his employer was, but not whether the bank could contact the employer. In processing the application, the bank contacted the customer's employer. Though this violated the bank's own policy of getting the customer's consent to contact the employer, the bank claimed that the customer should have known that employment verification was part of the lending process. We recommended that the bank pay the customer \$500 for its breach of his privacy. The bank followed our recommendation.

Insurance matters

We have received an increasing number of complaints related to the sale of insurance products. Here are some examples:

Discrepancy between the brochure and insurance policy

A customer brought a complaint seeking a pay-out under a life insurance policy. The description of the coverage in the product brochure differed from the terms of the policy, and the brochure terms favoured the customer. We recommended that the insurance company pay based on the terms in the brochure. The insurance company followed our recommendation.

Life insurance on a mortgage

A young couple sold their home and purchased a new home that was being built. They applied for the new mortgage at the same bank, asking for the same coverage they had on the previous mortgage, which included life insurance. In the process of obtaining the new mortgage, the couple was never presented with an insurance application for completion.

A few months after applying for the mortgage but before the house closing the husband was diagnosed with cancer

and subsequently died. The widow tried to collect under the life insurance, but the bank refused payment on the basis that there was no policy in force.

We recommended that the bank treat this as though the insurance existed and give the widow \$120,000 to pay out the mortgage. The bank followed our recommendation. In making our determination, the widow's credibility was important, but there was also a good deal of evidence supporting her claim.

In the process of resolving this complaint a serious procedural error at the bank branch was revealed. In investigating the matter it became apparent that the branch that processed this mortgage routinely took customers' incomplete and unsigned insurance applications and kept them on file until closer to the time of closing, rather than immediately arranging for insurance coverage. As a result, customers were not covered by insurance, though their liability under the purchase agreement commenced with the approval of financing. In cases involving new homes under construction, because the time between arranging financing and actual closing of the house can be quite long, customers whose homes were under construction but not yet completed were responsible for the debt, but had no insurance coverage.

Investing with care

We are seeing more and more complaints related to the activities of banks' brokerage services. Often we find a significant gap between what customers of discount brokers expect to receive in terms of advice or research services and what such brokers are contractually required and legally permitted to provide. Also, there are cases where customers do not appreciate the risks of investing. With discount brokers, the responsibility lies with the customer to understand what he or she is getting into, including determining the financial consequences of an investment decision, and overseeing his or her investment portfolio.

Here are some complaints we investigated involving brokers:

Discount brokers

The customer and broker calculated the number of shares of a bank stock the customer wanted to purchase with cash in his RRSP account. The customer placed a market order. At that time, the proposed bank mergers were announced and the market

jumped. The order was executed the following morning at a higher price than the customer expected and the purchase put his RRSP account into a debit balance, which was not permitted under the terms of the RRSP. To clear the debit, the broker sold stock from the account. The customer

claimed the system should have prevented the error and he sought compensation. We concluded that since the customer was using a discount broker, account management was the customer's responsibility and he was not entitled to any compensation.

Full service brokers

- A customer of a full service broker bought a mortgage-backed security. Repayments under the security were blended payments of interest and principal. The broker was supposed to retain the principal amount and reinvest the interest portion. Without realizing it, the customer received repayment

of principal and interest amounts, which she spent, depleting the capital in her account. We recommended that the broker reimburse half the principal it erroneously paid out (approximately \$1,000) and the broker followed our recommendation.

- A broker at a full service brokerage firm put the customer, a senior citizen with limited

assets, into high-risk stocks. The stocks declined more than 50% (about \$15,000). On investigation of the complaint the firm was unable to locate the know-your-client form. We recommended that the firm reimburse the customer his loss. The firm followed our recommendation.

No sell order placed

A customer dealt with both the full service broker and the discount broker of a bank. The discount broker did not have access to a new issue the customer wanted to purchase so he bought the shares through the full service broker and then asked to have stock transferred to his discount account. The

transfer was delayed and the market declined, leaving him with a loss. The customer claimed that while the shares were being transferred between accounts he was unable to sell the shares quickly and avoid the loss. Our investigation revealed that he never put a sell order in from either account. In other words, despite the fact that the shares were "in

transit" between the accounts, he could have sold the shares had he put in a sell order. As a result, we concluded that the customer's loss was not a direct result of the delayed transfer and therefore we did not make a recommendation.

Misleading information not cause of the loss

A customer placed an order to purchase shares through a telephone order entry system. The stock exchange was down temporarily but the broker's phone system did not have a notice that the stock exchange was

down and the telephone system continued to reflect the last trade on the stock exchange. The customer was misled by the quote and purchased shares on which he ultimately lost money. On investigation, we found that the customer could have avoided the loss (actually, he could have

had a profit) had he sold the shares the day after receiving the misleading information. Therefore, he could not claim he suffered a loss because of the misleading information on the telephone order entry system.

REDUCED LINE OF CREDIT WITHOUT NOTICE

A small manufacturing company was losing money and its bank reduced its line of credit from \$100,000 to \$65,000. The customer protested and the bank did not enforce the reduction in the line of credit and the company continued to operate with loan balances fluctuating up to \$90,000. Four months later, when the loan balance temporarily declined below \$65,000, without warning the bank began enforcing the reduction in the line of credit (to \$65,000) and returned cheques to key suppliers and employees without advising the customer that the cheques had been returned. As a result, some of the company's suppliers began shipping only on a COD-basis, further straining the company's cash-flow. Because of these financial problems, the scope of the business had to be cut back and the owner had to focus on the financial crisis, rather than on production and sales.

In our view, though the bank was justified in reducing the line of credit, because it continued to allow credit up to \$100,000 for four months, the bank owed the customer notice before it enforced the reduction. There was evidence that a personal conflict between the customer and the bank's account manager may have had a bearing on the bank's actions.

We estimated that the company suffered damages of about \$30,000 and we recommended that the bank reimburse the company. From what we understand, settlement of the matter helped put the company back on track and the business is now thriving.

HOUSE FINANCING FAILED

A customer wanted to purchase a house in another province. He could have financed the purchase by liquidating investments or by borrowing. He went to his bank to arrange a demand loan for \$80,000. The customer claimed he told the bank manager that he wanted the loan and that they discussed how to get documents to the other province for signature by another family member. The customer was advised by the bank's loan officer that the loan had been approved. When the closing was a week away and no documents had been received in the other province, the customer went to see the branch manager about the missing documents. Though the loan had been approved, the bank

manager had never processed it. The bank claimed the customer never confirmed that he wanted the loan. There was still time to put the financing in place and the customer suggested a number of viable alternative ways of dealing with the logistics of getting signatures, but the bank manager rejected all his suggestions. To finance the closing the customer was forced to liquidate some investments.

The bank denied all responsibility for the failed financing. The customer complained to the bank in writing. Given his experience dealing verbally with the bank, he insisted on a written response but the bank wanted a meeting and avoided responding in writing for over one year.

On investigation, we found the customer's version of events credible and consistent over time. At a mediation session we conducted between the bank and customer, the bank offered \$5,000 to settle the matter, but the customer refused. The customer demonstrated that he suffered an \$8,000 after-tax loss as a result of having to liquidate his investments to finance the purchase. We recommended that the bank reimburse the customer for his investment loss and pay an additional \$5,000 for the poor service, in particular for the customer's inconvenience and time spent as a result of the bank's poor handling of the complaint. Both parties accepted our recommendation.

CUSTOMER LOST HOUSE OVER \$800

A low-income single mother of three renewed her mortgage, arranging for weekly payments. The form letter she received from the bank confirming the renewal was unclear: it could be read as allowing a six-week payment holiday. Not knowing for sure if this interpretation of the letter was correct, the customer deposited her payments as usual for the first four weeks after receiving the letter. When she noticed that the bank did not withdraw any of those payments, she assumed her initial interpretation regarding the six-week holiday was correct and she withdrew the money from the account, using it to pay for family expenses.

Thereafter, the bank demanded \$800 in arrears it claimed was due on the mortgage. The customer could not pay the entire amount immediately but offered to repay the arrears at the rate of \$15 per week. Despite the fact that prior to this incident the customer had a satisfactory payment history, the bank would not accept what it considered to be too slow repayment and it quickly started legal proceedings to take the house. The customer went to a lawyer, but he wanted a retainer, which she could not afford.

The customer ended up moving out of the house within two

months of the bank's demand for payment of the arrears. After the bank sold the house it attempted to garnish her wages to recover the \$12,000 shortfall on the sale. The bank's ombudsman recommended that the bank absorb the shortfall, which it did. The customer, feeling she had been poorly treated, came to us.

We concluded the bank's communication was poor both before and after the problem arose, its records were incomplete and its judgment questionable, at best. The customer ended up losing her house over \$800. We recommended that the bank pay \$30,000, which enabled her to buy a similar home in the same community and left her with a smaller mortgage balance than she would have had if she had remained in her original house.

TIMELY SALE OF AGRICULTURAL ASSETS

Though it takes time to investigate complaints, and normally complaints are handled in the order in which they come to us, there are exceptional situations where the complaint is time-sensitive (such as the potential loss of a home or where a failure of a business loan may put the business and jobs in jeopardy). Such cases are given priority and we work hard to resolve them as quickly as possible.

One case that required us to act quickly involved a retailer of hardware, small equipment, seeds and fertilizers that was in receivership. Through a new company, the former owner made an offer to the Receiver (who was acting for the bank) to purchase the inventory and the real estate. On acceptance of the offer by the bank, the new company gave a non-refundable deposit of \$60,000. At the closing, a dispute arose over who was responsible for \$23,000 of municipal taxes owing and the transaction did not close. The bank refused to refund the deposit and the bank ombudsman declined to do anything to help the customer. Much of the inventory was seasonal and the Receiver was proceeding as quickly as possible to prepare the inventory for auction and had advertised the auction widely.

The purchaser contacted the CBO four business days before the auction. We had extensive interviews with the bank, the Receiver, the purchasers and the lawyers for both parties. The lawyers conceded that there may not have been an understanding on the taxes and therefore the agreement may not have been enforceable. The dispute had to be resolved and the transaction closed before the auction. It was already late in the planting season and any further delay would jeopardize the value of the inventory and any recovery by the creditors.

We mediated an agreement whereby the purchaser had several options to purchase the assets or accept a refund of the deposit and abandon the purchase. The bank agreed to pay the taxes and the parties closed the purchase under the terms of the original agreement.

CREDIT CARD COMPANY/ MERCHANT DISPUTES

The customer entered into a contract with a merchant under which he agreed to drive a vehicle to Florida on behalf of one of the merchant's clients. The customer was required to post a \$300 deposit/bond against performance of his obligations under the contract. The contract provided that the merchant would return the bond to him upon delivery of the vehicle in good condition to the agreed location. The bond was posted using his credit card. The vehicle was delivered to the agreed location, but the merchant refused to return the deposit, alleging that because the vehicle was broken into during the trip, the customer was not entitled to the return of the deposit. The customer disagreed and asked the credit card company to reverse the transaction.

After looking into the matter, the credit card company advised the customer that it was unable to reverse the transaction. The merchant showed the credit card company the sales draft that the customer signed authorizing the charge to his credit card. The credit card company explained that because a signed draft was provided to it, and the customer confirmed that the signature was his, it had no right under its agreement with the merchant to charge the amount back to the merchant and credit it to the customer's account. The credit card company's position was that any dispute between a customer and a merchant about the terms of a contract, to which it is not a party and of which it had no knowledge, remains between the customer and the merchant.

We did not support the customer's position because the relevant cardholder agreement provided (as do most such agreements) that all disputes regarding transactions evidenced by a sales draft or credit voucher must be settled directly between the merchant and the cardholder.

Credit card users should be aware that credit card companies have limited obligations to intervene in disputes between merchants and customers and if provided with a signed sales draft will generally require that the matter be settled directly with the merchant.

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