

fairness

awareness

independence



Canadian Banking Ombudsman Inc.

Annual Report 2000

CONTENTS

1	Message from the Chair of the Board of Directors
2	Message from the Canadian Banking Ombudsman
4	The process is working: the number of complaints and how they are resolved
6	How we protect your personal information
8	Comments on the statistical summary for the year
10	How have we done? Two primary ways we assess our service
11	How the Canadian Banking Ombudsman works
12	How the Canadian Banking Ombudsman is organized
14	Public confidence and the Independent Directors
15	Case comments

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*

In 1996 the Canadian Banking Ombudsman (CBO) was a start-up organization dealing only with complaints from small businesses. The CBO has evolved into an organization considering complaints related to all of the products and services offered by the bank financial groups to both individuals and small businesses. The issues include banking transactions and deposits, credit, mortgages, investment transactions (through the bank or through the full service or discount brokers), insurance products and trust services.

The CBO is led by a Board of Directors comprised of six Directors who are independent of the member-banks and five Directors who are senior executives of the banks. I have been the Chair of the Board of Directors for the last 3 1/2 years. I am pleased to say the Board has functioned very well over the period, with excellent cooperation between the Independent Directors and industry representatives on the Board. All Board decisions have been made by consensus and, in my view, have been made with the best interests of the customer in mind.

The federal government is concluding a four-year review of the financial services sector and changes to the various statutes effecting the industry are working their way through the final stages of the legislative process. The ombudsman process is part of that legislative change. The legislation states that the federal Minister of Finance may designate a body to deal with complaints that have not been resolved by the institutions and that the Minister may appoint a majority of its directors. The banks will be required to join the designated body and other financial sectors will be able to participate but will not be required to do so.

The federal government is also participating in a task force with provincial regulators and members of the financial services industry to determine the possibility of creating a comprehensive financial services ombudsman to include all financial services sectors.

The Board of Directors of the CBO has continuously supported the single comprehensive ombudsman concept because we believe it will provide the broadest and most accessible dispute resolution for customers and will ensure consistency on a national basis for all customers and all sectors. We encourage all stakeholders to work towards that goal.

During the year 2001, the CBO will undoubtedly wind-up its operations and be replaced by a new entity resulting from one of the above-mentioned processes. This may be the last annual report of the CBO and I would like to thank the members of the Board of Directors for their support and vision throughout the development of the CBO and for its ongoing commitment to ensuring quality and independence. I would also like to thank Michael Lauber, the Ombudsman from inception, for his leadership and his staff for their hard work and dedication to fairness.

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

Message from the Canadian Banking Ombudsman



*Michael Lauber
Canadian Banking
Ombudsman*

Each year I report that we have dealt with some very interesting cases and this year is no exception - most of the situations we are asked to consider are fairly complex or unusual, because matters that are routine or straightforward are resolved by the member-institutions. Occasionally, if our initial scrutiny reveals something the bank may have missed in its investigation, we ask the institution to take another look at the complaint because we believe the customer is best served if matters can be resolved directly by the institution with which the customer does business.

I tend not to use the word "bank" when referring to the institution a customer does business with because the member-bank financial groups are integrated financial services organizations that provide a full range of financial services and products including traditional banking services, investment advice and services, and insurance. For example, in fiscal year 2000, 19 percent of the complaints we received related to wealth management products and services offered by the institutions, with just over half of those involving full service and discount brokers, and we anticipate the proportion of complaints relating to wealth management products and services to increase.

Every complaint is unique, with a particular set of circumstances that effect the communication between the customer and the institution's staff. The sophistication and financial circumstances of each customer must be taken into consideration by the institution when providing services and advice. For the CBO, assessment of the unique facts and circumstances surrounding each complaint is essential to evaluating the institution's performance and in determining an equitable resolution of the complaint. For example, the suitability of an investment recommended to a customer by an investment advisor is dependent on the individual investor's situation - in assessing the appropriateness of investment advice it must be remembered that opportunity in the eyes of one customer may be a recipe for financial ruin for another.

I am pleased to announce that our membership roster has grown to thirteen with MBNA Canada Bank joining the Canadian Banking Ombudsman in January 2001.

During the year, I had the opportunity to meet with financial ombudsmen from Australia, Ireland, Mexico, New Zealand, South Africa, the United Kingdom and the United States. These ombudsmen represented both public sector and industry organizations in the banking, insurance and investment sectors. I find sharing experiences and learning about the challenges faced by ombudsmen operating under other systems interesting and worthwhile. From such meetings I often gain a perspective that can later be applied in resolving our customers' problems.

I would like to thank my colleagues for their efforts during the year and their consistent

commitment to fairness in evaluating both customers' complaints and the banks' actions. I would also like to thank Dr. Peggy-Anne Brown, Chair of the Board of Directors, and the other Directors for their continued commitment to the Office and for their continuing commitment to consumer protection as structural change occurs. As Dr. Peggy-Anne Brown noted, we anticipate that the coming year will bring significant changes to the industry. I would like to take this opportunity to assure the public that whatever complaint-handling or ombudsman process evolves, the CBO is committed to ensuring an orderly transition and continued protection of customers.

I invite you to visit our web site at www.bankingombudsman.com.

*Michael Lauber, FCA
Canadian Banking Ombudsman*

The sophistication and financial circumstances of each customer must be taken into consideration by the institution when providing services and advice. For the CBO, assessment of the unique facts and circumstances surrounding each complaint is essential to evaluating the institution's performance and in determining an equitable resolution of the complaint.

The process is working: the number of complaints and how they are resolved

For many years, the member-banks have had internal processes to deal with customer complaints. Legal action was always available to the customer, but that was not practical for most issues and was beyond the financial ability of most customers.

In 1996 the industry established a two-tiered, formalized ombudsman system to investigate complaints that were not resolved by the banks' complaint-handling units. Under the ombudsman system there is an ombudsman at each institution ("the internal ombudsman"), as well as an independent, industry-level one ("the Canadian Banking Ombudsman" or "CBO"). The mandate of both the internal ombudsmen and the CBO is to provide impartial and independent resolution of complaints based on fairness and good industry practice. The ombudsman process provides the customer the opportunity to seek redress without cost.

The entire system places primary responsibility for resolving the customer's complaint on the bank's business units - for example, the bank branch staff, the manager of the local office of the investment dealer, the marketing group for insurance or other products, etc. Complaints that are not resolved by the business units are then considered by the complaint-handling unit or customer service group. Because most complaints are resolved at this stage, relatively few complaints go to internal ombudsmen. If a customer brings a matter to an internal ombudsman and is still not satisfied, the customer can ask the CBO to undertake an independent investigation of the complaint. Since matters that reach the CBO have undergone several earlier reviews, the situations investigated by the CBO are usually fairly complex or they involve unique facts or situations.

COMPLAINTS BROUGHT TO BUSINESS UNITS

Billions of transactions are executed annually by bank financial groups - some in person at business units, some through ABM machines, and still others by telephone and over the internet. Occasionally customers have questions, concerns or complaints.

For example, a customer may not have fully understood the transaction, there may have been an error, or the institution's service may have fallen short of the customer's expectations. The majority of such matters are resolved to the customer's satisfaction on the spot or, if investigation is required, within a few days. The manager of the business unit, or perhaps a regional manager, usually becomes involved if the staff of the unit is not able to resolve the matter.

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

COMPLAINTS BROUGHT TO THE COMPLAINT-HANDLING GROUP

The major divisions and subsidiaries of the member financial institutions have complaint-handling groups for complaints not resolved at the business-unit level. For example, unresolved complaints regarding banking services typically are directed to customer satisfaction groups; unresolved complaints relating to investment services are usually directed to the compliance department; and insurance subsidiaries generally have their own complaint-handling group. These complaint-handling units further investigate complaints, resolving them if possible. Complaints raised to this level are recorded, tracked and analyzed to determine if there are any systemic issues that need to be addressed. Customers with more complicated unresolved issues usually receive a written response to their complaint.

COMPLAINTS BROUGHT TO THE INTERNAL OMBUDSMEN

An institution's internal ombudsman investigates unresolved complaints from customers of all subsidiaries of the institution. Similar to the CBO, the mandate of the internal ombudsmen is to provide impartial and objective resolution of

complaints based on fairness and good industry practice. To provide the necessary autonomy, the internal ombudsman reports to the chief executive officer of the institution.

During 2000, 1,861 complaints were brought to the various internal ombudsmen. In 51% of these cases, agreement was reached with the customer; partial resolution was achieved in an additional 17% of the cases. Customers usually receive a written response from the internal ombudsman and are advised of their right to bring their complaint to the CBO.

The number of complaints brought to the internal ombudsmen has been declining (from a high of 3,170 complaints in 1997). The banks attribute the decline in the overall number of complaints to improved services resulting from a greater emphasis on customer service training of employees and to focusing on addressing customer concerns at the source of the complaint. Over the years, in approximately 50% of the cases the internal ombudsmen concluded that the customer's complaint was completely justified and arranged for the redress the customer sought. In an additional 20% of the cases the complaints were settled by awarding customers some of what they were seeking.

CASES BROUGHT TO THE CANADIAN BANKING OMBUDSMAN

As noted in the Comments on the Statistical Summary for the Year, during 2000, we concluded 154 investigations and recommended that the bank take action in favour of the customer in 25% of those cases. In an additional 9% of the investigations we adjusted the bank's offer to the customer or recommended a small payment to compensate for poor service or inconvenience. Over the past three years, the number of investigations carried out by the CBO has remained fairly constant at about 170 per year.

FEWER IS BETTER FOR THE CUSTOMER

While the CBO role is to provide an independent review of customers' complaints, its mere existence reinforces a discipline of fairness in the internal ombudsmen's offices in all cases they consider. In turn, the existence of the internal ombudsmen puts

pressure on the complaint-handling units and business units to be more responsive to customer concerns. This "push-down effect" results in more thorough and responsive consideration of complaints and escalation of fewer complaints through the various levels of review.

To some, the percentage of complaints the CBO resolves in favour of customers seems low. However, when looking at the statistics, it must be remembered that by the time a complaint is investigated by the CBO it has already been reviewed at several stages. Indeed, the fact that a relatively modest number of matters reviewed by the CBO are resolved in favour of the customer indicates that the institutions' procedures are effective in resolving complex or otherwise special situations, which is one of the goals of the process.

CONCLUSION

The ombudsman process (both within the bank groups and the CBO) is premised on the belief that there is no reason customers should go without fair resolution of complaints. The process is well structured to resolve straightforward complaints quickly and fairly and to provide detailed, objective and independent investigation of more difficult and unique issues. Recognizing that there is always room for improvement, it is clear that the process has helped significantly advance the quality of dispute resolution in the banking industry. Evidence of this fact is that over the years some customers have expressed satisfaction with the process because they felt the matter was thoroughly and objectively reviewed even in situations where we did not support their position.

How we protect your personal information

The CBO respects your privacy rights. Late last year, in anticipation of the coming-into-force on January 1, 2001 of the federal privacy law - The Personal Information Protection and Electronic Documents Act ("the Act") - we reviewed our procedures involving the protection of private information. We are pleased to report that our procedures generally meet or exceed the requirements of the Act. Because the Act requires organizations to document their procedures and make them available to the public, we recently documented our procedures in a more formal way. As well, we have updated the CBO employee code of conduct to ensure compliance with the new legislation.

The Act requires organizations to obtain the express consent to collect an individual's personal information and requires organizations to advise customers about how personal information will be used. Though we have always required customers to sign a letter giving us permission to obtain personal information necessary to investigate their complaint, we have redrafted it to explain why we need their personal information and how we will use it, as required under the legislation.

On an on-going basis, we will monitor regulations and interpretations related to the Act and we will analyze similar legislation that might be introduced by the provinces. (Quebec has had privacy legislation since 1994 with which we comply as it relates to residents of Quebec.)

Customers of member-bank financial groups with complaints concerning privacy and the use of personal information will continue to be able to bring such complaints to the bank's complaint-management group, the internal ombudsman and, ultimately, to the CBO. And of course, customers also have the right to complain to the Privacy Commissioner of Canada.

THE FOLLOWING IS THE CBO PRIVACY STATEMENT:

At the Canadian Banking Ombudsman Inc. ("CBO"), we are 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 institutions and others to facilitate the investigation and resolution of your complaint. The types of personal information collected will depend on the nature of your complaint, but may include your birth date, home address, telephone number and financial and health information. Your complaint, with personal identifiers removed, may be used to compile statistical data or to prepare case studies, which may be made public.

Our privacy practices and procedures are based on 10 privacy principles:

Our Accountability to You

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

Identifying our Purposes for Collecting Personal Information

Before or when we collect your personal information, we will let you know why we are doing so, explain how we will use it, and when it may be disclosed.

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. If you withdraw your consent, we may not be able to provide further assistance in resolving your complaint.

Limiting our Collection of Personal Information

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

Limiting our Use, Disclosure and Retention of Personal Information

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.

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 it. Please contact us by telephone at the number below or in writing at the address below.

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.

Making our Privacy Policy Information Available to You

Our privacy policies and procedures are available to you in writing on request.

Providing You with Access to your Personal Information

You have the right to request access to your personal information in our possession. In some circumstances, however, we may not provide you with personal information in our control. For example, we will ask you to contact your financial institution directly to access your personal information provided to us by that institution in the course of our dispute resolution process. To request access to your personal information, please contact us at the telephone number below or write to the Chief Executive Officer at the address below.

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 Canadian Banking Ombudsman and CEO at Canadian Banking Ombudsman, 4950 Yonge Street, Suite 1602, Toronto, Ontario, M2N 6K1

At the Canadian Banking Ombudsman Inc. ("CBO"), we are committed to ensure 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.

Comments on the statistical summary for the year

During fiscal year 2000, 1,179 individuals and small businesses ("customers") contacted the CBO for information on how to lodge a complaint with their bank or with the CBO (for fiscal 1999, 1,083 customers contacted us). Many customers contacting the CBO simply want to discuss their concerns with someone knowledgeable and independent, so they can determine whether they have a complaint they should pursue. If a customer's complaint has not yet been investigated by the bank and the internal ombudsman, we direct the customer to the appropriate person at their bank.

In 2000 we commenced 167 (171) (figures in parentheses relate to fiscal 1999 and are shown for comparison) investigations and completed 154 (194) cases. Of those 154 cases, we made recommendations in favour of the customer in 25% (27%) of them. In an additional 9% of the 154, we adjusted the bank's offer to the customer or provided a small payment to compensate for poor service or inconvenience. At the end of fiscal 2000 we had 44 (32) cases under investigation, 13 (11) of which were more than three months old.

STATISTICAL OVERVIEW FOR THE YEAR ENDED OCTOBER 31, 2000

	Canadian Banking Ombudsman		
	Personal	Small business	
COMPLAINTS AND INQUIRIES RECEIVED	1,044	135	
COMPLAINTS RESULTING IN INVESTIGATIONS	144	23	
THE NATURE OF THE COMPLAINTS WERE AS FOLLOWS:			
Account and transactions	24%	30%	
Card services	13%	26%	
Fees and charges	6%	13%	
Credit - new or changed terms	2%	18%	
Credit - collections	17%	4%	
Privacy and confidentiality	1%	0%	
Service and advice	18%	0%	
Tied selling	0%	0%	
Other selling practices	0%	0%	
Other	19%	9%	
	100%	100%	
INVESTIGATIONS CONCLUDED IN THE PERIOD	127	27	
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	36%	22%	
We found the bank's action appropriate in the circumstance	64%	78%	
OMBUDSMAN'S ASSESSMENT OF COMPLAINANTS REACTION*:			
Agreement was reached	29%	19%	
Partial resolution of the complaint was achieved	13%	7%	
No agreement reached	58%	74%	
Complaints resolved within 20 business days	18%	19%	
Complaints under review at end of year	40	4	

Individual Bank Ombudsmen	
Personal	Small business
1,653	208
29%	25%
12%	4%
5%	10%
9%	21%
13%	26%
2%	1%
24%	8%
0%	0%
0%	1%
6%	4%
100%	100%
1,627	212
(not applicable)	
51%	51%
17%	20%
32%	29%
70%	66%
122	17

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	4	1
Bank of Montreal	23	5
Canadian Western Bank	1	0
Canadian Imperial Bank of Commerce	28	4
Citibank Canada	0	0
HSBC Bank Canada	2	1
ING Bank of Canada	2	0
Laurentian Bank of Canada	9	2
National Bank of Canada	7	3
Royal Bank Financial Group	27	4
Scotiabank	30	2
TD Bank Financial Group	11	1
	144	23

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.

How have we done?

Two primary ways we assess our service

ASKING THE CUSTOMER

The Ombudsman is always interested in listening to the concerns of customers regarding its review process and in receiving constructive suggestions. Because it is important to us to know whether we have met our customers' expectations, soon we will begin asking customers to respond to a survey on completion of our investigation of their complaint. We will use the survey results to review our procedures and take corrective action, when necessary.

The Service Satisfaction Survey will ask customers to evaluate our service performance on issues such as accessibility, prompt communication, timeliness and the overall service level. The survey will not ask whether the customer agreed with our decision, however, because decisions are made objectively by the Ombudsman and the Deputy Ombudsmen based on the results of our investigation and considering fairness and good industry practice. Because we believe it is important for the customer to understand the rationale for our decision, the survey will ask whether our letters and discussions were complete and understandable to the customer. Since it is also important that customers perceive the process as having been thorough and fair (regardless of whether we have supported their position), the survey will also ask questions concerning the customer's perception of the fairness of the process.

COMPLAINTS ABOUT THE CBO

Occasionally, a customer expresses dissatisfaction with our process. All complaints we receive in writing are investigated by the Ombudsman and recorded in a register of complaints. The register is reviewed by the Board of Directors at its quarterly meetings. The Board is provided with a summary of the complaint (without the customer's name and personal information) and the Ombudsman's comments. Complaints addressed directly to the Board, or where the customer requests that the complaint be given to the Board, are forwarded to the Board's Chair and are also included in the register of complaints.

In the four-and-one-half years of operation, only five complaints have been made to the Chair or the Board, and the Board has supported the actions of the Ombudsman in each case. Fortunately, over the years we have received many more expressions of appreciation than complaints.

How the Canadian Banking Ombudsman works

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 bank'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.

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 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.

How the Canadian Banking Ombudsman is organized

MEMBERS

The Canadian Banking Ombudsman Inc. is a not-for-profit corporation. Currently 13 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 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.

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.

BOARD OF DIRECTORS

Independent Directors:

Peggy-Anne Brown (*Chair*)
President
Brown Crawshaw Inc.
Vancouver

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

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

Partner, Cox Hanson O'Reilly
Matheson
Halifax

A partner with Cox Hanson O'Reilly Matheson, Barristers and Solicitors, Mr. Gallivan specializes in corporate commercial 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 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

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

Lindsay Gordon

Chief Operating Officer
HSBC Bank Canada
Toronto

Réal Raymond

President
Personal & Commercial Bank
National Bank of Canada
Montreal

Ron G. Rogers

Vice Chair
Personal Commercial &
Financial Services
Bank of Montreal
Toronto

Public confidence and the Independent Directors

Confidence in the independence of the Ombudsman is essential to the success of the process. Protection of the Ombudsman's independence is fostered, in large part, by the existence of six Independent Directors on the CBO Board. To help instill public confidence in the impartiality of the CBO, the Board decided that Independent Directors should be individuals who are identifiable to the public and independent of the member-banks and banking industry.

As well, the Board decided Independent Directors should be known and respected on a regional or national basis, either in their own right or by virtue of an appointment or office they hold or have held. The mix of Independent Directors is also intended to be representative of the Canadian population, so there should be a balance of men

and women, representation of minority groups and aboriginal people, and a proportionate geographic representation. Because of possible conflicts, trade association staff and members of interests groups have not served as Independent Directors. Since the Board is not consulted on investigations or decisions concerning customer complaints, Independent Directors do not need expertise in banking, securities, insurance or other areas that the Ombudsman's office considers.

More information about the governance structure of the CBO and the powers and responsibilities of the Board of Directors can be found in the section "How the Canadian Banking Ombudsman is Organized".

Participating banks (at January 2001):

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
MBNA Canada Bank
National Bank of Canada
Royal Bank Financial Group
Scotiabank
TD Bank Financial Group

CASE COMMENTS

Though every case we investigate is unique, we think there is something to be gained by describing some cases we have considered. Here is a sample of some from the past year, including an explanation of our resolution of the investigation and a brief comment about the lessons to be learned from the case.

Bank branch should have informed customer

In mid-February, the customer completed an application at his local bank branch to open a trading account with the bank's discount broker. At the end of February he phoned the branch to see if the account had been opened. When the bank told him it was not yet open, he asked whether something could be done to enable him to purchase shares he wanted. The branch offered to transact the purchase for the customer. The customer agreed and he ordered 10,000 shares in a small, over-the-counter

technology company. There was no discussion at that time about details of the transaction, including the manner in which the order would be processed, the amount of the commissions, or the customer's future intentions regarding the stock. A few days later, the customer received confirmation slips showing 10,000 shares purchased at 61¢ each. Some time after that, the customer attended at the branch and signed a Securities Purchase Order form prepared by the branch at the time the shares were purchased.

On March 13 the customer wanted to sell the shares. He contacted the branch and was told that it had ordered the securities in "registered form". In other words, the stock certificates were being

prepared in his name, and the customer would receive them in one to three months. The branch contacted the discount broker to determine whether the shares could be sold before the customer received the certificates. The discount broker told the branch that its policy forbade selling shares until the certificates were received. On March 13 the shares opened at \$2.62 and closed at \$2.03. Between March 13 and April 13 the customer called the branch regularly to try to expedite the sale of the shares, as their

market price was falling. Finally, on April 14 the branch told him that the sale of the shares could now be arranged, despite the fact that he had not yet received the certificates. The customer told the bank to sell, and the shares were sold for 73¢ each.

The customer then complained to the bank that the branch's failure to advise him that he would have to wait for share certificates before being able to sell the shares prevented him from selling on March 13, when he wanted to. He felt he should be compensated based on the March 13 market price of the shares. The bank refused to offer any compensation. Its position was that the branch does not provide advice with respect to securities. On stock purchases through a branch, share certificates are ordered in the name of the customer so as to ensure that interest and dividend payments are processed directly to the customer, freeing the branch from the responsibility for this extra administration.

Our view was that the branch is clearly not the agent of choice for a customer seeking to buy or sell securities. Securities trading is not its primary business. We also felt that the bank's practice of requiring branches to order securities in registered form is completely reasonable. However, the branch did not advise the customer of its practice and did not tell him it could take weeks or months for the certificates to arrive and that in the interim he would probably not be able to conduct further transactions with the shares. We also determined that the bank's written policy did not direct staff as to how to order securities and regarding the need to inform customers of the limitations and restrictions of the process. We felt that it was the duty of the branch to tell the customer of the possible restrictions, and then let the customer decide whether or not to proceed with the purchase through the branch. The bank's failure to explain the process led directly to the customer's inability to sell the shares on March 13 and we concluded that fairness required the bank to accept responsibility for the customer's loss. We recommended that the bank pay to the customer the

difference between what the customer received when the shares were sold and what he would have received had he sold on March 13 (based on the average trading price for the shares on March 13). This totaled over \$13,000.

LESSON LEARNED: The bank must ensure that it fully informs customers of its process relating to transactions, particularly when the method by which it will handle the transaction differs from the way in which the transaction would typically be handled in the industry. The bank must also ensure that its written policies provide its staff with adequate direction so as to ensure that such transactions are processed properly and without misunderstandings.

Banks are free to choose with whom they want to do business

SUMMARY: Sometimes we get complaints about banks when they decide to stop doing business with a customer. Often banks make such a decision as a result of a loss of confidence in the customer or the customer's financial situation. Generally, a bank is free to choose to terminate a relationship, though in doing so it should honour its published policies and be fair and reasonably flexible in dealing with the customer during the termination process.

The customer operated a large cattle farm. As a result of bad feed, the customer lost a sizeable portion of his herd, putting a strain on his business and causing cash-flow problems. He stretched out payments to suppliers and obtained additional loans from the bank. The customer's financial difficulties persisted and the bank requested a business plan. The customer then hired a consultant who provided a business plan that he thought would be acceptable to the bank.

The bank rejected the plan and suggested the customer find other sources of financing, giving the customer about three months to repay the bank what he owed. The customer was unable to repay the amount within the original time frame, but the bank granted him a number of extensions and about a year later the customer managed to repay the bank in full, without any financing. The customer complained that the bank never took the

time to understand his business and it was unfair for the bank to decline to do business with him.

Our review of the bank's files indicated it had a good understanding of the customer's difficult situation but that the bank's concerns for the longer term resulted from low working capital and the lack of a business plan it was willing to support. A good business relationship requires two parties that have confidence in each other. After carefully following its own policies and procedures, the bank made a business decision to sever its relationship with the customer - a decision it was entitled to make. Furthermore, the bank took care to ensure the customer's best interests were honoured in the process, giving the customer sufficient time to repay the bank and to arrange an alternative banking relationship. Therefore, we did not make any recommendation to the bank.

Miscommunication on mortgage transfer

SUMMARY: The customers were left without mortgage insurance coverage when the bank led them to understand that the insurance could be transferred with their mortgage. Because the customers and bank share responsibility, the amount owing on the mortgage will be reduced by the bank if the customer, who would have been insured, dies and an amount is still owing on the mortgage.

The customers, a husband and wife, were offered a 5-year mortgage at a better rate than their existing mortgage. They then called both their local bank and the bank that had their current mortgage to see whether either would match the rate. The bank indicated it would. The customers told the bank representative they would only transfer the mortgage if they were able to keep the insurance coverage they had with their current mortgage. What they did not tell the bank was they wanted to keep the current insurance policy because the husband had been diagnosed with a terminal illness and he would not qualify for new insurance.

The bank representative told the customers there would not be any problem transferring the insurance coverage, as this was done all the time. This seemed plausible to the customers given that there were two separate debits from their bank account - one for the mortgage and one for the insurance. The customers also made anonymous calls to the insurance company and the institution that held their mortgage to confirm this. The insurance company told them to check with the institution holding their mortgage, and that institution told them it sounded like the life insurance was a separate policy that was not dependent on who lent the funds.

When the customers signed the new mortgage documents they declined the insurance, assuming the bank would make arrangements to move the insurance to the new mortgage. When they noticed the monthly insurance premium was not debited, they discovered the lack of portability outlined in the terms of the insurance policy. Because of the husband's illness, they could not obtain insurance. The customers believe the bank should provide them with the coverage they lost when switching their mortgage.

We determined the bank representative's statement that such insurance is transferred all the time was incorrect. Our inquiries suggest that, in fact, most mortgage insurance is through a group policy provided by the lender and therefore is not transferable. As a result, we concluded there was an unintentional miscommunication surrounding the insurance, resulting in the customers being left without mortgage insurance coverage. We believe the bank and the customers bear equal responsibility for the situation

and we recommended that if there should be a balance owing on the mortgage in the event of the husband's death, the bank should reduce the amount then owing by one-half and such an adjustment should be made with no pre-payment penalty.

LESSONS LEARNED: Customers should take responsibility for understanding the terms of their insurance policy and should not seek advice from their bank regarding a policy issued by another company, nor should they sign a mortgage until they fully understand the terms and conditions of the insurance policy.

Failed loan transaction

SUMMARY: The customers mistakenly thought their business loan would be approved and when the loan was denied, the bank's actions in returning cheques to suppliers jeopardized the customers' credit with their suppliers. The customers were entitled to compensation for the poor service and damage to their reputation.

In June, the customers (a husband and wife who owned a business) approached their bank branch manager (the Manager) concerning financing they required to buy-out a competitor and to expand their business. They provided the Manager with a draft business plan and asked the Manager to let them know what else was needed to arrange financing. They kept the Manager apprised of the developments at all stages of their expansion. In November, the Manager asked for some information, including an estimate of the cost of the renovations from the contractor and a letter from the building owners about the lease, etc. The information was provided and the customers also asked the Manager whether they should be looking at other sources of financing or grants; they were told that was not necessary. In the interim, the customers had been provided with overdraft privileges with the understanding the financing package, when processed, would take care of the overdraft.

In late January, the customers met with the Manager to review the status of their negotiations and financing. In the first week of February the renovations at the new location, which was across the street from the bank branch, were started and the new staff was hired. At about the same time, the Manager indicated the financing, which had grown slightly from the initial request, exceeded her authority, but she reassured the customers approval was usually almost automatic. A few days later the customers were advised the loan had been declined and were instructed to pay down their overdraft immediately. Then, despite the fact the Manager told the customers cheques would not be returned without their being advised, various cheques were returned for non-sufficient funds (NSF). The bank manager tried to repair the damage caused by the returned cheques, but in a conversation with one of the customers' most important suppliers the bank manager refused to admit that the reason for returning the cheque was bank error; instead the manager said the bank's reason for returning the cheque was a "client/bank misunderstanding". As a result of that conversation, that supplier decided to reduce the customers' line of credit, which necessitated the customers obtaining an additional letter of credit from another bank and caused them to cash-in RRSPs to provide additional security.

The difficulty here arose from a substantial breakdown in communication between the customers and the Manager. The Manager thought she had simply indicated an interest in reviewing the financing if/when the negotiations of the purchase were firmed up, while the customers proceeded thinking financing had been assured. In our opinion, the Manager should have reacted to the customers' verbal updates and asked the customers to complete the formal

application sooner. But, it was not sound business practice for the customers, who were not first-time borrowers, to presume financing was assured when there was no signed document or written commitment from the bank. The Manager's confusing response to the supplier's inquiries about the reason for the NSF cheque led directly to the supplier's actions and contributed to the customers' business problems. As a result, we recommended that the bank pay the customers \$20,000 in compensation for the poor service, costs, lost interest opportunity, inconvenience and damage to their reputation resulting from the bank's actions.

LESSONS LEARNED: Though the bank manager may not have realized that the size of the loan facility ultimately sought by the customers would exceed her authorization limit, the most damage was caused by the bank manager's vagueness and lack of candor with the customers' supplier concerning the NSF cheque. Had the manager been more forthright in responding to the supplier, much of the customers' problems could have been avoided.

Merchant's actions enabled credit card fraud

SUMMARY: A merchant took advantage of questionable selling opportunities over the Internet, making sales to persons overseas. To facilitate the transaction the merchant accepted the credit card numbers without seeing the cards and engaged in split-ticketing. Because this was in violation of the credit card Merchant Agreement, he was not entitled to relief.

A merchant received an e-mail inquiry from someone in Uzbekistan whom the merchant thought he met many years before but with whom he had not previously done business. The person in Uzbekistan placed an order for merchandise on behalf of a foreign company and provided the Canadian merchant with 11 different credit card numbers and expiry dates for what were supposed to be corporate credit cards. Names were not provided for these cards. The e-mailed instructions were that the merchant was to split the payment equally between the credit cards and if there was a problem with any card, a lower amount was to be charged to it, with an additional amount charged to other cards. Another requirement was that when shipping the merchandise, the total price of each package had to be under \$1,000.

The merchant made 23 requests to the credit card company for authorization of payment for the orders, in amounts ranging from about \$1,600 to about \$4,900. The majority of requests for authorization were turned down, but after many attempts orders totaling about \$45,000 were approved. However, eventually all charges were rejected by the real cardholders as fraudulent and over \$35,000 was charged back to the merchant's account. (About \$10,000 was not charged back to the merchant because the cardholders' challenges of the charges were too late.)

The merchant contended that the credit card company was aware that the cards were being fraudulently used on at least two of the transactions at issue and should have contacted the merchant by phone or fax, rather than by ordinary letter, which took 10 days. The merchant argued that had it been more promptly notified by the credit card company, it could have limited the loss to about \$10,000. The merchant sought reimbursement of the remaining \$35,000 that had been charged back to its account.

We concluded the merchant was not entitled to any relief because the merchant did not comply with the terms of the credit card Merchant Member Agreement. Among the violations of the agreement was the merchant's processing of transactions without cards being present and engaging in split-ticketing, which is a specific basis for the bank to refuse to credit the merchant's account. Furthermore, there were many signs that should have aroused suspicion about this customer, including the number of card numbers furnished, the instructions, the request for split billings and the number of attempts that were denied. As for the speed with which the credit card company informed the merchant, we felt that the time was reasonable and, in any event, the merchant

never asked to be put on the credit card company's fax system, despite being given the opportunity to do so. In essence, in our view, the merchant responded to implausible sales opportunities over the Internet and then failed to follow reasonable business practices, all of which enabled the fraud to occur.

LESSONS LEARNED: Merchants entering into a Merchant Agreement with a credit card company are bound by the terms of the contract, including the rules about cards being presented for transactions and split-ticketing, the speed with which the credit card company notifies the merchant with respect to disputed transactions, etc. Also, merchants should be wary of making sales via the Internet to parties they do not know, especially in far away places, and they should not ignore signs of fraud or act to facilitate fraud simply to make a sale (for example, by putting through charges to card numbers without being provided with the cards or without verifying a signature).

Authenticity of signature

SUMMARY: The customer and her father opened a joint GIC, which allowed him to add a third party to the GIC without the customer's consent. The GIC proceeds were paid to a third party that had been so added. However, because of a lapse in bank processes in administering the GIC, the customer was entitled to reimbursement of the amount paid to the third party.

The customer and her father had a joint GIC. Shortly after her father's death, the customer advised the bank of his death and sought to redeem the investment. The customer was advised the proceeds of the GIC had been paid at maturity (about one month prior to her father's death) to her father's second wife. The bank explained to the customer that six months after the GIC was established, the customer's father added his second wife to the GIC and under the terms of the GIC, any one of the named holders had the right to amend or redeem the GIC. The bank showed the customer the signature her father had allegedly given when amending the GIC to include the second wife and also explained that the second wife had accompanied him into the branch and assisted him by translating the instructions for him. The customer was of the view the signature on the amendment to the GIC was not her father's and she sought reimbursement for the amount of the GIC.

We determined there was a clear lapse in bank processes in administering the GIC. The bank did not respond to the customer's challenge of the authenticity of the signature and the bank was unable to find the original GIC joint deposit agreement, which would have been helpful in authenticating the father's signature. We concluded the bank was unable to prove it met its obligations regarding ensuring the wife was properly added as a third owner of the GIC and therefore we recommended the bank reimburse the customer the amount of the GIC.

LESSONS LEARNED: When opening a joint GIC, customers specify whether transactions and/or changes require approval of both parties ("both to sign") or of either party ("any 1 to sign"). In this case, because either party could authorize transactions/changes, the father could add anyone (here it was the second wife) to the GIC without the consent of his daughter. Care should be taken when opening a joint GIC to ensure that it is opened in a way that will meet the intentions of the parties.

Bank card liability

SUMMARY: The customer's bank card, which she used only for banking, never at bank machines or as a debit card, was stolen without the customer realizing it and amounts were withdrawn from her accounts. The customer was entitled to some compensation because the bank never informed her of her potential liability under the card.

In March 1999 the bank issued the customer, a senior citizen, a bank card because the branch was in the process of switching from using paper forms for routine transactions and customers were encouraged to use their bank cards, even if they were banking in person at the branch. Reluctantly, the customer accepted the new bank card and the bank representative set it up so, linking it to various accounts she had. The customer signed the necessary paperwork for the new card and chose a PIN number. The customer never used the bank card for banking transactions or as a debit card. In May 1999 when she went to her bank to do some routine banking she discovered that her bank card was missing. She also found out that day that about \$11,000 was missing from her accounts. She then realized the last time she saw the card was about five days earlier.

The customer complained to the bank, but the bank refused to reimburse the money that had been taken using the debit card. The customer argued the only reason she took the bank card was because she felt she had to because the branch was moving away from the use of forms. The customer also argued she had never been told what the cash withdrawal and point-of-sale limits were on the bank card and she was shocked that they were high enough that so much could be stolen from her accounts. The bank took the position that the customer must have written her PIN number down somewhere or otherwise divulged it and therefore the bank was not responsible for the loss. The customer claimed she followed the bank's directions in choosing a PIN number and she never wrote it down or divulged it to anyone. The bank also took the position that it is not mandatory that it inform the customer of the daily and weekly limits related to bank cards.

After investigation we concluded that it would have been impossible for the thief to discover the customer's PIN number unless she had written it down somewhere or otherwise inadvertently divulged it, since she never used the card. However, we were also of the view that the bank should have advised the customer of her potential liability due to unauthorized use of the card and the PIN number. Therefore, we recommended that the bank and customer share the loss equally.

LESSONS LEARNED: Bank cards carry risk. Regardless of whether the customer uses the bank card as a debit card, chances are the bank considers it a debit card and the customer will be liable for losses resulting in its use as a debit card if it is lost or stolen. Customers should be informed as to what their liability is (in terms of any daily and weekly limits regarding both cash withdrawals and point-of-sale transactions) in the event their card is lost or stolen. As well, customers not interested in using their bank card either as a debit card or for AMB transactions should consider asking their bank whether lower daily and weekly limits can be specified.

Debit cards

SUMMARY: The customer did not immediately notify the bank when he discovered his debit card was missing. The issue was his liability for amounts withdrawn and purchases made using the debit card.

The customer's wallet was lost or stolen on a Friday. On Saturday morning the customer discovered the loss and immediately cancelled the credit cards, debit card and cheque books that he believed were missing. But, he overlooked two bank cards until Monday morning. One of the cards was the customer's bank debit card. The customer did not use this card often and considered the account "dormant" because it was overdrawn and because he had begun banking at another financial institution, therefore greatly reducing the activity in that account. By Monday, his account at the bank, which was overdrawn \$50 on Friday, was overdrawn by \$2,200.

Initially, the bank took the position that the customer owed it \$2,200 plus interest because the customer failed to report the card was missing as soon as reasonably possible, and therefore he contributed to the unauthorized use of the card. Subsequently, the bank's ombudsman offered to reduce the amount the bank claimed he owed by \$600 as a goodwill gesture, but the customer did not accept this settlement. He believed the bank should have taken responsibility for all or a part of the amount. The customer argued that his personal identification number (PIN) was secure and he did not share it with anyone and that he notified the bank as soon as reasonably possible about the missing card.

We concluded the customer should have notified the bank of the loss at the same time he notified the other banks of the loss of his other cards - that would have been the "reasonable time". However, we believe that the customer's losses should be limited to the daily cash limit on the card, which the customer believed was \$500. While the bank considered the limit on the card higher, noting it had been increased from the original limit, it was unable to provide any evidence the customer had been notified of the increased limit.

LESSONS LEARNED: Customers should be aware that debit cards have both a cash withdrawal limit and a point-of-sale limit. These limits are often different and when a debit card is lost or stolen, unlike a credit card, the customer's point-of-sale and cash withdrawal liability limits apply each day and the customer could be liable to the bank for quite a lot of money, regardless of how much money they have in the account connected to the debit card.



Administration

Canadian Banking Ombudsman Inc.
4950 Yonge Street
Suite 1602
Toronto, Ontario
M2N 6K1

Canadian Banking Ombudsman

Michael Lauber

Deputy Ombudsmen

Brigitte Boutin
William M. Halford
Howard Maker
Karen McKenzie
Jo Anne Olafson
Doug Weber

For further information:

Toll free telephone: 1-888-451-4519

Toll free fax: 1-888-422-2865

Toronto area telephone: (416) 287-2877

Toronto area fax: (416) 225-4722

E-mail: mail@bankingombudsman.com

Web site: bankingombudsman.com

Administration: (416) 225-4410

Design: Jacques Pilon Design Communications

Writing: Ingrid Sapon, Communications Consultant



Printed on recyclable paper