SUBMISSION TO THE 2026 INDEPENDENT EXTERNAL REVIEW OF THE OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS

Submitted to CRK Houry & Associates Attention: Phil Khoury review@crkhoury.com

Submitted by: Harvey Naglie

Date: March 2, 2026

PRELIMINARY NOTE

This submission is made in a personal capacity and does not represent the views of any regulatory body, panel, or organization with which I am affiliated. It draws on thirty years of observation of Canadian financial regulation, consumer protection policy, and the persistent gap between the institutional promise of OBSI and its operational reality.

I am particularly motivated to share my comments at this time because the 2026 Independent External Review may represent the last serious opportunity to answer two questions that should have been settled when OBSI was created: what kind of complaint resolution institution do Canadian consumers of financial services need, and do our governments have the vision and/or will to build it?

In my view, the answer to the first question is clear. The answer to the second remains, after thirty years, genuinely uncertain.

I. FRAMING THE PROBLEM: AN INSTITUTION DEFINED BY ITS CONSTRAINTS

The Request for Comment returns to the central question whether OBSI has authority appropriate to its role. That is the right question. It is also, unfortunately, a question that has been raised repeatedly for more than a decade. The 2011, 2016 and 2021 independent reviews all concluded, in one form or another, that OBSI's non-binding model is inadequate. Yet while governments and regulators have taken partial steps - including designating OBSI as the single banking ECB and proposing a binding framework for investment complaints - they have still not carried the issue through to a fully implemented solution.

OBSI was conceived as an ombudsman, and that word matters. In modern financial services, an ombudsman is not simply a settlement facilitator. It investigates, makes findings, and can issue determinations with binding effect. That is how stronger peer regimes operate. In the United Kingdom, Australia, Ireland and New Zealand, financial ombudsman schemes can produce outcomes that bind at least the firm once accepted by the complainant.

OBSI cannot. Its recommendations are not binding on either party. That is not a minor difference. A body that can investigate, recommend and then be ignored lacks the authority that gives an ombudsman model its force. It may do useful work, but it cannot decide. It can only recommend.

That matters because the title invites comparison with institutions that deliver finality OBSI does not. OBSI is not a full ombudsman in the sense of modern financial-services sense. It is a non-binding dispute resolver carrying a more authoritative label than its powers justify.

That is not a criticism of OBSI's staff or leadership. It is a structural point. OBSI has been asked to deliver legitimacy without the legal tools that create it.

This submission addresses four structural failures that I believe the Review should confront directly: no binding authority, no systemic investigative mandate, procedural design that favours delay over redress, and too little consumer voice in governance.

II. THE BINDING AUTHORITY DEFICIT: THIRTY YEARS OF DEFERRED JUSTICE

The Core Problem

OBSI's foundational limitation is that its determinations are recommendations. A participating firm that disagrees with OBSI's finding on compensation may simply refuse to pay. OBSI's only recourse is to publish the refusal - colloquially, to "name and shame" - and to report the matter to the relevant regulator. Neither mechanism reliably produces compensation for the consumer who has been wronged.

The consequences are not abstract. OBSI's annual reports show a persistent gap between what OBSI recommends and what consumers actually receive. In a non-binding system, the threat of total refusal becomes leverage. That pressure falls hardest on consumers who are elderly, financially unsophisticated, or already worn down by loss.

OBSI's own 2024 consumer survey found a strong correlation between receiving compensation and reported satisfaction. That underscores an obvious point: process alone does not restore confidence where fair redress is absent.

The argument that binding authority is constitutionally or jurisdictionally unavailable to OBSI has been advanced for many years and remains unconvincing. OBSI already operates through a mandatory external dispute resolution framework for participating firms. In banking, the federal government has now made OBSI the single external complaints body. In investments, the CSA's 2023 and 2025 proposals confirm that a binding model is legally and administratively contemplated. The real obstacle has not been impossibility. It has been reluctance to implement a model that is both binding and accessible.

The International Comparators

The United Kingdom's Financial Ombudsman Service has long operated with binding authority. Its decisions can become binding and are enforceable. The UK experience refutes the claim that binding consumer redress would destabilize a mature financial market.

Australia's AFCA also issues binding determinations and combines that authority with a live systemic issues function. It identifies patterns across complaints and refers systemic matters to ASIC with an evidentiary record. Canada removed the equivalent OBSI function in 2013.

Ireland's Financial Services and Pensions Ombudsman issues binding decisions. New Zealand's Insurance and Financial Services Ombudsman does likewise within its scheme rules. Canada is the outlier.

The Review does not need another diagnosis. It needs to recommend a remedy.

The CSA Proposal and Its Deficiencies

The CSA's 2023 and 2025 proposals for binding authority are welcome in principle but compromised in design. The proposed two-stage process allows either party to trigger a second stage and, for stage 1 recommendations of $75,000 or more, requires OBSI to appoint an external decision maker or panel. A binding framework that layers on routine review, added cost and added delay risks becoming binding in name more than in effect.

That matters because delay will not be neutral. By the time a consumer reaches that stage, the complaint has already moved through the firm's internal process and OBSI's investigation. Adding another contested layer creates more time for fatigue, more pressure to compromise, and more opportunity for firms to use low settlements as the price of ending the process. A binding regime should strengthen redress, not turn it into an even more protracted bargaining exercise.

III. THE SYSTEMIC INVESTIGATION DEFICIT: THE 2013 DISARMAMENT AND ITS CONSEQUENCES

What Was Lost

Prior to December 2013, OBSI could investigate systemic issues - patterns of conduct that harmed consumers beyond the individual complainant. That power mattered. An ombudsman confined to individual files can relieve pressure case by case, but it cannot address the conditions producing the complaints.

In 2013, OBSI's Terms of Reference were amended to remove this systemic investigation authority. OBSI was restricted to a "referral protocol": it may identify potential systemic issues and refer them to the relevant regulator, but it may not independently investigate them, and it has no authority over whether or how the regulator responds. The effect is to insert a mandatory intermediary - a regulator that may have its own institutional reasons for inaction - between OBSI's identification of a problem and any remedial outcome.

The 2013 amendment followed a formal public consultation on proposed changes to OBSI's Terms of Reference. That does not make the outcome any more palatable. The amendment removed OBSI's ability to investigate systemic issues independently and confined it to a referral model under which regulators control whether and how broader patterns are pursued. The change was made through amendment of a private governance instrument rather than legislation, and it materially reduced OBSI's independent capacity to identify and address recurring misconduct.

The Comparative Standard

AFCA provides the clearest comparator. Its systemic issues team reviews complaint data across the full population of cases, investigates broader patterns, and refers substantiated matters to ASIC. That is an active function, not a passive referral protocol.

The UK FOS also performs a systemic-intelligence function. It publishes detailed complaint data and shares intelligence with the FCA and other regulators to help inform supervisory, redress and enforcement work. Its complaint data therefore operate as an input into regulatory oversight and an early indicator of wider conduct problems. That is the kind of institutional learning function OBSI was prevented from conducting directly after 2013.

The claim that systemic investigation should be left entirely to regulators misses the point. OBSI sees complaints at the point where individual harm begins to reveal broader patterns. Restricting it to passive referral strips that signal of much of its practical value.

The 2026 Review should recommend the restoration of OBSI's systemic investigation authority, with a formal obligation on regulators to respond to OBSI's systemic findings within a defined timeframe and to report back to OBSI on actions taken.

IV. PROCEDURAL DESIGN: HOW DELAY AFFECTS OUTCOME

The 90-Day Internal Process

The requirement that consumers first proceed through a participating firm's internal complaint process is, in principle, defensible. Internal resolution is faster and cheaper where it works. The problem is that delay is not neutral in a non-binding system. The public record already shows a persistent pattern of settlements below OBSI's recommended amounts, especially in higher-value cases. That is enough to raise a sincere concern that internal complaint handling is often used not to deliver fair redress, but to wear consumers down before they reach an independent body.

That concern is sharpened by CIRO's Phase 5 proposal on internal dispute resolution services. CIRO would preserve the firm's 90-day response period while allowing a further internal dispute resolution layer that, depending on timing, could extend the process to as much as 120 days from the original complaint or a further 30 days after a substantive response. Even if formally voluntary, that additional layer risks confusion, delay and added settlement pressure before OBSI can do its work. If binding authority is introduced, an onerous pre-OBSI review structure will only undermine it by increasing consumer exhaustion and making low settlements or abandonment more likely.

Limitation Risk Before OBSI

The limitation issue is real, but it arises earlier and more narrowly than is often assumed. Once OBSI formally opens a file, the limitation period for the complaint against the participating firm is generally suspended through the tolling agreement built into OBSI's consent process. The more significant risk arises before that point.

In Ontario, as in most provinces, civil claims are generally subject to a two-year basic limitation period running from discovery. Consumers may spend up to 90 days waiting for a substantive response and may then be encouraged to pursue a further internal dispute resolution process during which statutory limitation periods continue to run. The same practical concern arises with the 180-day deadline for escalating an unsatisfactory response to OBSI.

The result is not that OBSI investigations usually extinguish legal rights. They generally do not once the OBSI tolling agreement is in place. The problem is that the complaint architecture before OBSI is formally engaged can erode both bargaining position and legal options. Delay can push consumers toward accepting less, missing the OBSI escalation window, or allowing civil claims to become time barred.

The remedy is to close the gap before OBSI. Any mandatory or encouraged internal appeal or internal dispute resolution process should suspend applicable civil limitation periods and should not consume the client's OBSI escalation window. The better course is simpler: no additional internal layer should delay OBSI access once the firm has had a fair opportunity to respond.

The Accessibility Gap

Questions 1 through 5 of the Request for Comment deal with awareness and accessibility. Those are not mainly communications problems. They are structural ones.

OBSI's complaint volume is low relative to likely levels of consumer harm. The more plausible explanation is not that Canadian consumers are well served. It is that many harmed consumers do not know OBSI exists, do not know how to reach it, or give up after being physically and emotionally worn down by a long and arduous internal process.

AFCA is instructive. A single well-publicized body with simple intake will surface more complaints because it makes redress easier to use. Canada’s complaint intake channels remain too fragmented and too opaque from the consumer's point of view.

V. THE GOVERNANCE DEFICIT: THE CONSUMER VOICE PROBLEM

The Disbandment of the CIAC

The Consumer and Investor Advisory Council (CIAC) was, for all its limitations, the only structured forum through which consumer advocates could raise concerns independently and collectively about OBSI’s direction. In 2022, following multiple resignations, OBSI suspended the CIAC and later chose not to reconstitute it. At the same time, OBSI retained three designated industry director positions on its board and increased the number of consumer-interest directors from one to three. That change gives the appearance of strengthened consumer representation, but it does not replace the function of an independent consumer voice.

Board governance is shaped by norms of collegiality, consensus-building, and collective responsibility that tend to absorb and moderate dissent rather than surface it. Within that dynamic, consumer-interest directors participate as individual fiduciaries, not as an organized

counterweight to industry influence. The result is representation without leverage: the consumer voice is formally present, but structurally blunted, diluted by consensus and deprived of the independent platform necessary to surface systemic concerns or press for institutional change.

The core issue is not simply about whether stakeholder representation exists in name or number of Board positions. Instead, the fundamental concern is that the main institutional channel for organized consumer input, the principal mechanism through which consumer voices could be formally and collectively conveyed—was suspended and has not been reinstated. As a result, while individual consumer-interest directors may participate, the absence of a structured, organized forum for consumer advocacy has weakened the capacity for coordinated consumer input into OBSI's governance and decision-making processes.

A professional board and a consumer voice are not mutually exclusive. AFCA has both. The UK FOS supplements board governance with extensive public reporting and consultation.

OBSI's current governance structure gives consumer advocates no formal channel to surface systemic concerns or test whether the institution is meeting its public purpose. The June 2022 resignations of veteran consumer representatives were evidence of that loss, not merely symbolism.

The 2026 Review should recommend the reconstitution of a statutory consumer advisory body with an independent budget, a defined consultation mandate, and public reporting obligations. This body should not be constituted at the pleasure of the OBSI board; its independence from board direction is the point.

The Funding Model

Question 14 of the Request for Comment asks whether OBSI's operating costs are divided fairly among participating firms. This is a necessary but insufficient question.

It is typical for ombudsman organizations to be funded by the firms they regulate, and this arrangement, in itself, is not problematic. The real issue arises when such a funding structure is combined with a lack of binding decision-making power, no mandate to address systemic concerns, and inadequate consumer governance.

This problem is rooted in how the system is structured, rather than individual actions. An ombudsman funded by firms, without binding authority, a systemic mandate, or a strong consumer governance presence, is likely to default to compromise. This outcome is unsurprising given these structural limitations.

The Review should examine whether a case-fee model - under which firms pay a fee for complaints that proceed to investigation - would better align incentives. That approach is used in both the United Kingdom and Australia. It does not by itself prove better consumer outcomes, but it does place a direct cost on complaints that escalate, which may strengthen incentives for earlier and fairer resolution at the firm level.

VI. THE JURISDICTIONAL FRAGMENTATION PROBLEM

The MacKay Vision Deferred

The 1998 MacKay Task Force recommended a single-window national ombudsman for retail financial services. Canada never implemented it. Instead, it left consumers to navigate a patchwork of complaint bodies for banking, investments, and insurance.

That fragmentation matters most in cross-sector cases, where jurisdiction can determine whether the consumer gets any redress at all.

The Review cannot solve federal-provincial politics, but it can restate the obvious policy point: consumers need a more integrated redress framework, and OBSI's mandate should move in that direction.

VII. WHAT THE REVIEW MUST RECOMMEND

The Review operates within a defined mandate; however, the available evidence indicates a clear course of action.

The Review should make the following findings and recommendations:

Binding authority is non-negotiable. Three decades of evidence show that recommendation-only authority is inadequate. The Review should recommend binding decision-making authority for all OBSI determinations, but in a form that is accessible and final. Any review mechanism should be tightly limited and should not function as a routine second round of process. A binding model that institutionalizes a process that is burdensome, slow or easily gamed will invite the same low settlements and abandonment it is supposed to prevent.

Limitation protection must begin before OBSI, not only after OBSI receives a signed consent. The Review should recommend that any internal complaint appeal or internal dispute resolution process suspend applicable civil limitation periods, and that no firm should have more than 60 days to provide a substantive response before the client may proceed to OBSI. No additional internal layer should be permitted to delay that access.

Systemic investigation authority must be restored. The 2013 removal of that power should be reversed and the authority placed on a statutory footing, with a duty on regulators to respond to OBSI's systemic findings.

Consumer governance must be reconstituted on a structural basis. A statutory consumer advisory body, independent of the OBSI board, with its own budget and public reporting obligations, should be established as a permanent feature of OBSI's governance architecture.

The funding model should be reviewed for incentive effects. The Review should examine whether a case-fee model would better align firm incentives with early resolution, and whether OBSI's current funding structure creates pressures that are inconsistent with robust consumer advocacy.

Publication of anonymized determinations should be mandatory. OBSI should publish reasoned, anonymized determinations in all cases where it makes a finding. That would build a body of precedent, help identify systemic patterns, and improve accountability for the consistency of OBSI's reasoning.

VIII. ON THE QUESTION OF POLITICAL WILL

This submission has focused on structural and legal recommendations. It would be incomplete without acknowledging the political dimension.

Every substantive reform recommended here - binding authority, restored systemic mandate, stronger limitation protection before OBSI, and mandatory publication - requires legislative or regulatory action. That in turn requires governments to treat consumer redress as more than an afterthought.

The history of OBSI is, in material part, a history of the gap between consumer-protection rhetoric and implementation. In banking, Canada long maintained a multiple-ECB model that FCAC itself later concluded created delays, complications and inconsistency with international standards, before OBSI became the single ECB on November 1, 2024. In investments, binding authority has been repeatedly recommended but not implemented. And in 2013, OBSI's independent systemic-investigation role was narrowed through amendment to its Terms of Reference rather than by statute. The pattern is not one of isolated delay. It is one of repeated institutional compromise.

The 2026 Review cannot compel governments to act. But it can make the cost of inaction visible. It can document, clearly and specifically, the gap between what OBSI is and what it should be, and it can make that gap politically uncomfortable to ignore.

Thirty years is long enough. Consumers who accepted reduced settlements, or who may have abandoned complaints or settled for less during protracted internal processes, deserve an institution designed to serve them rather than exhaust them. The public record clearly supports concern about low settlements and process-induced pressure. That is enough to justify structural reform even without claiming a quantified rate of abandonment.

The 2026 Review has the opportunity to say so clearly. I urge it to do so.

Harvey Naglie Toronto, Ontario March 2026

REFERENCES

Australian Financial Complaints Authority. 'Systemic Issues.' AFCA website.

Canadian Investment Regulatory Organization. Rule Consolidation Project, Phase 5, including proposed amendments respecting internal investigation and client complaint requirements.

Canadian Securities Administrators. 'Proposed Framework for an Ombudsman for Banking Services and Investments with Binding Authority,' Notice and Request for Comment, November 30, 2023.

Canadian Securities Administrators. 'Revised Proposal for an OBSI Binding Authority Framework,' Notice and Request for Comment, July 24, 2025.

Financial Consumer Agency of Canada. 'Canadians now have a single external complaints body for banking.' News release, October 30, 2024.

Financial Ombudsman Service (United Kingdom). Annual Report and Accounts 2024-25.

Financial Ombudsman Service (United Kingdom). Case fees guidance for businesses.

Independent External Review Committee. Final Report of the Task Force on the Future of the Canadian Financial Services Sector (MacKay Report), 1998.

OBSI. Annual Report 2022.

OBSI. 'Considering legal action.' OBSI website, including tolling guidance and consent process.

OBSI. Consumer Survey 2024.

OBSI. Consultation on Proposed Changes to Terms of Reference, June 12, 2013.

OBSI. Approved Amendments to Terms of Reference, December 2013.

OBSI. Independent Evaluations page, including 2011, 2016 and 2021 review materials.

This submission may be published in full or in part by the Review. The author welcomes follow-up contact and is available for interview.