



OMBUDSMAN  
for Banking Services  
and Investments

OMBUDSMAN  
des services bancaires  
et d'investissement

**Remarks by**

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Ombudsman**

**Ombudsman for Banking Services and Investments**

**to the  
Banking, Trade and Commerce Committee  
Senate of Canada**

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Honourable Senators

Thank you very much for your invitation to speak to the Committee about Bill C-26 and the payday loan issue.

I want to welcome the opportunity that this bill has created: enabling the provinces to enact legislative measures that will regulate a financial services industry that is currently serving two million Canadians. It ought to be beyond debate that every industry offering financial services must be subject to a regulatory framework providing, among other things, strong protections for consumers.

However, while the phrase “consumer protection” has been used frequently in the discussion about this bill, and in relation to the payday loan industry in general, the missing component has been an effective independent dispute resolution mechanism for consumers.

The Ombudsman for Banking Services and Investments currently provides an independent and impartial dispute resolution service for the customers of more than 600 financial services firms, including domestic and foreign banks, trust companies, loan companies, credit unions, investment dealers, mutual fund dealers and mutual fund managers. We are free to consumers, and independent of the industries and firms we cover. Our governance structure has special provisions that ensure the independent directors, who are a majority of the board of directors, safeguard the autonomy of the Ombudsman and staff.

Our service is straightforward. Consumers must first attempt to resolve their dispute with the firm. If they can't, or aren't happy with the solution proposed by the firm, they have the right to come to us. We look at disputes arising from errors, misleading information, bad or unsuitable advice – in short some kind of maladministration that leads to financial loss or harm.

In our experience, consumers are best served by a complaints-handling system that can, at the end of the day, offer them the possibility of getting their financial wrong fixed. Simply put, they want their money back. Without a service such as ours, “consumer protection” may mean that firms are fined, lose their operating licence or have a membership revoked, but the consumer may well be still out-of-pocket.

OBSI welcomes the participation of all regulated financial services firms in our service, regardless of jurisdiction. In the Canadian context, one of the unique features of OBSI, made possible by our independent status, is that we seamlessly operate across provincial and federal jurisdictions, covering firms operating under the regulatory regimes of all 14 federal, provincial and territorial governments and their agencies.

When we look at a complaint, we do so in the context of the legal and regulatory framework, professional requirements, firm policies and good industry practices. Ultimately, we use fairness in all the circumstances of the case to determine our recommendation, but we believe that a regulatory framework is a key foundation to an effective dispute resolution scheme in financial services.

We also see a natural division of responsibility in consumer protection. Regulators must base their actions – whether in the areas of licensing or enforcement – in the laws and regulations that govern the industry. The sanctions they impose are similarly grounded in statutes and legal procedures. OBSI, operating as an alternative dispute resolution service, has significantly more latitude, and operates more informally. This allows us to be a true alternative to the legal system, which in any case is not a real option for the vast majority of our clients because of its cost. While the regulators deal mainly with sanctions, we can offer restitution to consumers that have been wronged.

As I mentioned, our services are free to consumers, as our operations are funded by a levy across our 600 participating firms. While we do not have binding authority over the firms – and clients are similarly not required to accept our conclusions – our recommendations continue to have a very high acceptance rate among both parties to the disputes we investigate.

As an alternative dispute resolution service facilitating settlements between consumers and financial services firms, OBSI's impartiality is important and we guard our neutrality. However, I am appearing before you today as an advocate for an effective and accessible complaints-handling system for all consumers of financial services. That kind of system requires the active participation and support of all governments, industries and firms.

We would welcome provisions in legislation and regulations that would require financial services firms to be members of an arms' length dispute resolution service, funded by the industry but independent of it. Requirements along those lines exist in some federal legislation and in the rules of the major self-regulatory organizations governing the investment industry in Canada. A similar provision has been proposed by the Canadian Securities Administrators to require all firms registered in the investment industry in Canada to belong to a dispute resolution service.

In the end, the goal is to be able to promote a consistent and direct message to all financial services consumers, regardless of the service they use: if you have a complaint, you have the right to an impartial and independent resolution of your dispute.

Thank you.