



April 17, 2026

Phil Khoury
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Independent Reviewer
2026 Independent External Review of OBSI
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Dear Mr. Khoury,

Re: Consumers Council of Canada Submission to 2026 Independent External Review of OBSI

Thank you for the opportunity to provide input to the 2026 Independent External Review of OBSI. This submission addresses OBSI's operational effectiveness and its ability to fulfill the expectations set out in the Bank Act, the Mandatory Reporting Guide for External Complaints Body, and the Memorandum of Understanding with the Canadian Securities Administrators. The public submissions to this Review provide excellent recommendations for improving OBSI's performance, many of which the Council endorses. Rather than repeat those recommendations in detail, we focus on several priority issues affecting OBSI's effectiveness and include an appendix addressing the Council's current thinking on binding authority implementation.

Public Awareness and Accessibility (Questions 1-5)

OBSI's complaint volume appears low relative to likely levels of consumer harm. This suggests awareness and accessibility barriers rather than absence of harm. Several practical improvements would enhance accessibility.

Recommendation: OBSI should adopt a plain-language initial intake allowing consumers to outline core grievances and desired outcomes before determining whether exhaustive documentation is necessary. The UK Financial Conduct Authority's Discovery Document model provides a useful precedent. This would reduce investor fatigue while maintaining investigative rigor.

Recommendation: OBSI should investigate AI-assisted intake systems to improve triage, identify jurisdictional issues early, flag missing information, and make the process more accessible to vulnerable or financially unsophisticated complainants.

Operational Service Delivery (Question 6)

Mandatory Dealer Complaint Handling as Structural Impediment: The requirement that complaints first proceed through dealer-controlled complaint processes creates delays, diversions, and procedural fatigue before consumers reach OBSI. Settlements during this phase are often conditioned on non-disclosure agreements that restrict transparency and limit regulators' ability to identify misconduct patterns.

Recommendation: OBSI should work with regulators to ensure limitation periods are tolled during all mandatory internal complaint processes, and that non-disclosure agreements be prohibited or strictly limited in complaint settlements.

Encouraging Good Practices / Authority Appropriate to Role (Questions 7-8)

The evidence suggests OBSI lacks authority appropriate to its role. OBSI's 2025 Annual Report demonstrates that over the five-year period from 2021 to 2025, 20 investment cases settled for less than OBSI's recommended amount, with a total compensation shortfall of \$795,178. Of that shortfall, \$624,514—representing 79%—occurred in claims over \$100,000, where consumers received on average only 53 cents per dollar of OBSI's determination.

When firms can refuse OBSI's recommendations and consumers accept discounted settlements to achieve finality, OBSI's investigative work—however thorough—cannot deliver the redress its mandate contemplates.

Recommendation: The Council supports a single-stage binding authority framework for OBSI. The Council's detailed analysis of why this framework would better serve OBSI's mandate and consumer protection objectives appears in Appendix A.

Working with Government and Regulators (Question 9)

Systemic Investigation Mandate: The 2013 removal of OBSI's independent systemic investigation authority should be reconsidered. OBSI's current referral protocol to regulators lacks the independent investigative capacity necessary to identify and address recurring market conduct issues effectively.

Recommendation: Restore OBSI's systemic investigation authority with formal obligations on regulators to respond to OBSI's systemic findings within defined timeframes and to report back on actions taken.

Jurisdictional Gaps: OBSI's mandate excludes integrated wealth management advice extending beyond securities-regulated products. Advisors routinely market integrated financial strategies including insurance-based investment products, yet OBSI's jurisdiction covers only part of this advisory relationship, creating artificial distinctions that disadvantage investors.

Recommendation: Regulators should work toward greater coordination between securities and insurance oversight to align OBSI's jurisdiction with how financial advice is actually delivered to consumers.

Fairness, Independence and Impartiality (Question 10)

Consumer Governance: The 2022 dissolution of the Consumer and Investor Advisory Council removed the only structured forum through which consumer advocates could raise concerns independently about OBSI's direction and effectiveness. While OBSI has increased consumer-interest director positions on its board, board governance norms tend to absorb dissent rather than surface it, and board representation does not replace an independent consumer voice.

Recommendation: Reconstitute a statutory consumer advisory body with independent budget, defined consultation mandate, and public reporting obligations distinct from board governance.

Implementation and Accountability

Meaningful consumer protection in concentrated financial markets does not reliably emerge from periodic reviews alone. Reviews without stronger implementation mechanisms risk producing recommendations that are acknowledged, deferred, or absorbed without structural correction.

Recommendation: The Review should recommend a formal public response requirement whereby regulators state what recommendations they accept, what they reject, and why, within a defined timeframe following publication of the Review report.

Consent to Publish

The Consumers Council of Canada consents to publication of this submission and its appendix in full on the Review website. If necessary or appropriate please contact Cori Ferguson (cori.ferguson@consumerscouncil.com) or Harvey Naglie (harvey.naglie@gmail.com) for follow-up consultation or interview.

We thank you for the opportunity to contribute to this important Review and look forward to its findings and recommendations.

Yours truly,



Don Mercer
President
Consumers Council of Canada

APPENDIX A: CONSUMERS COUNCIL OF CANADA – CURRENT THINKING ON BINDING AUTHORITY IMPLEMENTATION

Background

The Consumers Council of Canada was a signatory to the September 19, 2025 coalition submission responding to CSA Notice and Request for Comment 25-314 concerning the proposed binding authority framework for OBSI. That submission made a compelling case for binding authority, which the Council continues to support without qualification. Since that submission, information has become available that has caused the Council to reconsider its position on how binding authority should be implemented. This appendix sets out the Council's current thinking on the implementation mechanism.

The CSA's Proposed Two-Stage EDM Framework

The Canadian Securities Administrators have proposed granting OBSI binding authority through a two-stage External Decision Maker (EDM) framework. Under this proposal:

- Stage 1: OBSI investigates and issues a binding determination
- Stage 2: For determinations of \$75,000 or more, either party may trigger review by external decision makers
- Stage 2 review may extend 60 to 90 days (Source: CSA Notice 25-314, EDM review timeline provisions)

Three Concerns with the EDM Framework

First, OBSI's claim-distribution data shows the EDM threshold aligns precisely with where settlement shortfalls are concentrated. The \$75,000 EDM threshold makes stage 2 review available as a firm right precisely in the claim range where 79% of settlement shortfalls occur (claims over \$100,000). This creates procedurally legitimized delay leverage where consumers have historically received the least favorable outcomes.

Second, the EDM mechanism may perpetuate existing settlement patterns under a different procedural label. Firms facing stage 1 determinations above the threshold may trigger stage 2 review. During the 60-90 day review period, firms retain the ability to approach consumers with settlement offers below the stage 1 determination. Consumers—typically unrepresented and facing uncertainty about stage 2 outcomes—may accept discounted settlements to achieve finality.

OBSI's 2025 Annual Report case study of "Ms. Y" illustrates this pattern: OBSI recommended \$143,504 for unsuitable investment advice; the firm refused and offered \$120,000; the consumer accepted 84 cents on the dollar. Under the EDM framework, a similar consumer would face the same settlement pressure during stage 2. The label would change from "lowball settlement" to "negotiated resolution during stage 2," but the dynamic might not.

Third, the EDM mechanism does not appear to be legally necessary. OBSI currently operates as a private non-profit organization. The CSA's proposed framework would designate OBSI under securities legislation, conferring statutory authority to make binding decisions. That statutory transition would trigger procedural fairness requirements under *Baker v. Canada*: notice, opportunity to respond, unbiased decision-maker, written reasons, and judicial review. OBSI's current investigative process already provides these elements. What would change is not process adequacy—it is that outcomes become legally binding rather than non-binding recommendations.

Multiple Canadian statutory tribunals (Workplace Safety and Insurance Appeals Tribunal, Social Benefits Tribunal, FSRA adjudicative panels) issue binding decisions using informal inquisitorial processes without firm-triggered external review mechanisms. Internationally, the UK Financial Ombudsman Service transitioned to statutory binding authority in 2000 and maintained its inquisitorial process without adding an external review stage. When challenged on procedural fairness grounds, the UK Court of Appeal in *R (Heather Moor & Edgcomb Ltd) v. Financial Ombudsman Service* [2008] EWCA Civ 642 held that the inquisitorial process satisfies natural justice requirements for binding statutory decisions. Australia's Financial Complaints Authority operates similarly.

In Canada, Saskatchewan and New Brunswick have enacted enabling legislation for binding OBSI authority without including an EDM mechanism (Saskatchewan Bill 150, Royal Assent May 2024; New Brunswick Bill 9, Royal Assent December 2025).

The Council's Current View

The Council's concern is that the EDM mechanism, while intended as a procedural safeguard, risks becoming a regulated forum that perpetuates settlement patterns currently observable in OBSI's claim-distribution data. The mechanism provides firms with procedurally legitimized delay precisely where consumers have historically received the least favorable outcomes. To the extent the Review supports establishment of binding authority—as the Council hopes it will—the Council respectfully submits that a single-stage process issuing binding determinations without firm-triggered delay mechanisms, modeled on UK, Australian, Saskatchewan, and New Brunswick frameworks, would better serve OBSI's mandate and consumer protection objectives.

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