

**February 28, 2024**

Submitted via Email

**Attention:**

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Office of the Superintendent of Securities, Newfoundland, and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Ontario Securities Commission  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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## Re: CSA Notice and Request for Comments: Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service (the Proposal)

The Investment Industry Association of Canada (IIAC) includes investment firms across multiple registration categories subject to dispute resolution services outlined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

The IIAC strongly supports accessible, cost-effective, fair, and reasonable resolutions to investor disputes (the **Objective**).

The IIAC provides the following analysis and recommendations to achieve the Objective.

In so doing, we note that the total compensation numbers and number of case files handled by the OBSI are very minor relative to the size of the investment industry. For example, in 2022, the OBSI recommended a total compensation of \$1,302,885 for investment complaints, with an average recommended compensation of \$8,985.<sup>1</sup> In comparison, the Canadian Investment Regulatory Organization (CIRO) oversees 262 Canadian investment and mutual fund firms and their 108,000 representatives across Canada. CIRO members reflect only a fraction of investment firms within the OBSI's mandate, which include scholarship plan dealers, exempt market dealers, portfolio managers, and investment fund managers.

All investment firms within the OBSI's mandate are subject to high regulatory standards and are required to address investor complaints in a manner that a reasonable investor would consider fair and effective. Their approach to complaints is subject to its own regulatory oversight apart from the OBSI.

### EXECUTIVE SUMMARY

To achieve the Objective, investors deserve choices for dispute resolution. The choices available to them should be fair, impartial, and independent.

The Proposal, as currently drafted, is unable to achieve the Objective. In general terms:

1. The OBSI's current processes should be subject to continued enhancements.
2. The recommendation for binding authority is unsupported by OBSI data and wider scale domestic and international practices.
3. The Proposal as drafted raises fairness concerns.
4. An integrated and harmonious dispute resolution regime which preserves investor choice is needed. The Proposal should be amended to:
  - I) Provide consistency across provinces and territories.
  - II) If binding authority is granted, reflect core fairness attributes.
  - III) Include external mediation services.

<sup>1</sup> Ombudsman for Banking Services and Investments (OBSI), Annual Report 2022 at p. 45.

IV) Integrate the CIRO arbitration program and Commission tribunals.

5. The CSA oversight proposed compromises the OBSI's independence.
6. The CSA should actively discourage any legislative review until comments to the Proposal have been meaningfully considered, adjustments have been made for further public comment, and those additional comments considered.

## I. ENHANCEMENTS TO OBSI PROCESS ARE NEEDED

There is continued concern regarding the procedural fairness of the OBSI. Concerns include the following:

- i) The process and staffing are misaligned with the credibility assessments and weighing of evidence needed.
- ii) Lack of meaningful transparency as to evidence relied upon to support a recommendation.
- iii) Investigatory bias.
- iv) Inability for the parties to meet and assess one another's evidence directly.
- v) Loss methodologies utilized.
- vi) "Fairness" tests are vague and subjective and may not reflect either the relevant documents or applicable law.
- vii) Scope of a complaint is unclear and/or subject to change.
- viii) Documentary production exceeds relevance.
- ix) Limitation periods contradict statute in some provinces.
- x) Monetary limits are exceeded. In practice, the \$350,000 limit is per individual, rather than per complaint. Therefore, in the case of a joint account, they would have authority to bind up to \$700,000 for two account holders. In addition, OBSI interpretations regarding a security, strategy, or document may impact multiple individuals so that cumulative monetary considerations may well exceed \$350,000 and should merit procedural safeguards for all parties.
- xi) Misconceptions regarding the use of legal counsel by investors. At the investor's option, a lawyer may assist them in making a good, informed decision. Rather than encouraging an assumed lack of need for legal representation, it should be an OBSI requirement to recommend independent legal advice to all investors at every stage, which the investor may waive, to ensure they have the support they need in their decision-making.

Further details of these concerns are beyond the scope of this correspondence. We are happy to further discuss with a view to positive resolution.

## II. ADDITIONAL GENERAL PROCEDURAL CONCERNS RAISED

The following recommendations in the Proposal raise additional general procedural concerns:

## Definition of Complaint

The proposed definition of a complaint for purposes of s. 13.16 and s. 13.16.1 of NI 31-103 as a client's "expression of dissatisfaction" is too broad and should be limited to compliance related concerns and exclude service complaints.

## Timing

As stated by the CSA in the Proposal, most retail investor complaints are resolved by firms. Either an investor or a firm may have good reasons where the full and proper review of a complaint may take longer than 90 days. The OBSI should make every reasonable effort to encourage completion of firm investigation and proposed resolution before its involvement. For example, the following excerpt from 31-103CP is helpful guidance which should be maintained:

*We think that it may sometimes be appropriate for the independent service, the firm and the client involved in a complaint to agree to longer notice periods than the prescribed 90 and 180 day periods as a matter of fairness. We recognize that where a client does not cooperate with reasonable requests for information relating to a complaint, a firm may have difficulty making a timely decision in respect of the complaint. We expect that this would be relevant to any subsequent determination or recommendation made by an independent service about that complaint.<sup>2</sup>*

### III. RECOMMENDATION FOR BINDING AUTHORITY UNSUPPORTED BY DATA

#### i) OBSI DATA

The recommendation for binding authority in the Proposal is unsupported by the data produced. There is no indication that the proposed amendments would "improve investor protection and promote increased fairness for retail clients" or "enhance the accessibility and efficiency of dispute resolution through the identified ombudservice."

As stated, and recognized by the CSA in the Proposal, "most retail clients' complaints are resolved by firms." OBSI data shows that case retention is high, and the data provides no reasons for the small percentage of cases withdrawn or abandoned.<sup>3</sup> Concerns regarding risk of abandonment are not substantiated. The CSA has therefore stated the data shows that overall:

*OBSI has low case withdrawal rates and suggests that the current process used by OBSI in considering a complaint is one that complainants may generally find to be helpful or accessible. It appears that complainants choose to remain engaged instead of pursuing other forms of dispute resolution or abandoning their case.<sup>4</sup>*

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<sup>2</sup> See section 13.16 of 31-103CP.

<sup>3</sup> Canadian Securities Administrators, *CSA Notice and Request for Comment – Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Proposed Changes to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations* ["**Proposal**"] at p. 6 (Table 2, "2018 to 2022 Case Data - Investments Only").

<sup>4</sup> The Proposal at para. 3(c)(ii), p. 7.

Historical refusals to pay have been low and isolated<sup>5</sup>:

Year	No. of Case Files	Refusals
2015	166	6
2016	150	1
2017	150	0
2018	135	0
2019	180	0
2020	142	2
2021	215	1 (also reported in 2020)
2022	148	0

There has been insufficient meaningful consultation, analysis, and research to understand the root causes of these minimal refusals.

The Proposal assumes “patterns of settling disputes for less than OBSI recommends.” The numbers are similarly low and isolated:

*For OBSI’s fiscal years 2018 to 2022, out of 844 cases that resulted in monetary compensation, 42 cases (approximately 5%) involving 24 firms settled below OBSI recommendations. From November 1, 2015, to October 31, 2020, investment firms paid almost \$3 million less than what OBSI recommended should be compensated to clients.<sup>6</sup>*

Importantly, it is unclear what is meant by “patterns of settling disputes for less than OBSI recommends” and whether such patterns exist. The OBSI’s current, fluid process involves preliminary views subject to input by the parties and possible subsequent amendment to reflect facts, documents, and more appropriate loss methodology. Alternatively, should such patterns exist, no analysis has been provided as to the underlying reasons. The OBSI process enhancements as outlined briefly in this correspondence are long-standing and impact responses to OBSI “recommendations.” The enhancements needed to OBSI’s process and the monetary significance that the OBSI’s recommendations result in a negative impact on all firms but particularly smaller firms and are therefore unreflective of fair, sound policy.

The Proposal also speculates, without supporting evidence, that “low settlements” would discourage investors from taking their case to the OBSI or erode investor confidence in OBSI services.

Finally, the Proposal presumes an inefficiency for firms in a non-binding process as it potentially prolongs complaint resolution and resources. Rather, a binding process, including the form of binding process proposed, is more likely to prolong complaint resolution and consume more resources.

<sup>5</sup> OBSI, Annual Report 2022 at p. 45; OBSI, Annual Report 2021 at p. 44; OBSI, Annual Report 2020 at p. 44; OBSI, Annual Report 2019 at p. 41; OBSI, Annual Report 2018 at p. 42; OBSI, Annual Report 2017 at p. 41; OBSI, Annual Report 2016 at p. 37; and OBSI, Annual Report 2015 at p. 31.

<sup>6</sup> The Proposal, Annex E at para. 6(a)(i), p. 32; and see Professor Poonam Puri and Dina Milivojevic, Independent Evaluation of the Ombudsman for Banking Services, and Investments (OBSI) Investments Mandate (June 13, 2022) at p. 35.

## ii) COST-BENEFIT ANALYSIS: OSC

According to s. 143.2(2)(7) of the Ontario *Securities Act*<sup>7</sup>, the Commission must publish in its Bulletin notice of every rule that it proposes to make, which must include “a qualitative and quantitative analysis of the anticipated costs and benefits of the proposed rule”.<sup>8</sup> Section 2.1 of the Ontario *Securities Act* outlines the principles to consider in pursuing the purposes of this Act. Section 2.1(6) states, “Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized”.<sup>9</sup> These “cost-benefit” provisions of the Ontario *Securities Act* are not replicated in every province or territory in Canada.

### Lack of Benefit

The increase in the monetary compensation paid to complainants hypothesized in the Proposal is not expected. Rather, in light of the concerns regarding OBSI process, the more likely result is an increased scrutiny of and reasonable challenge to OBSI recommendations.

### OBSI Costs

According to the OSC analysis produced, it is anticipated that if an identified ombudservice has the authority to make binding recommendations, more investors (who are difficult to predict), will choose to have their complaints considered by the identified ombudservice. This anticipation has not been accompanied by variable additional volume scenarios, detailed budget estimates, pro forma of increased costs, analysis of impact on resources, and proposed percentage increase in fees.

We agree with the OSC’s suggestion that the Proposal will increase the OBSI’s operating costs. The concerns raised regarding the OBSI’s current process and binding proposal are considerable, such that a binding process cannot be derived from “the existing internal reconsideration process at OBSI”. Should the OBSI assume binding powers, a restructure and restaffing of the OBSI with securities lawyers and judges would be needed, in turn giving rise to significant cost. In any event, implementation costs will not be reduced by overlap in hiring and training of new personnel to address increase in volume under the OBSI’s banking mandate. Banking complaints differ substantially from securities related complaints.

### Participant Costs

As stated, should the OBSI responsibly assume binding powers, additional costs to OBSI participants to address expertise and infrastructure changes would be significant. Binding authority will also attract additional scrutiny to OBSI analysis on any given complaint. Additional time and resources will need to be

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<sup>7</sup> *Securities Act*, R.S.O. 1990, c. S.5, s 143.2(2)(7), online: < <https://www.ontario.ca/laws/statute/90s05#BK217> >.

<sup>8</sup> More specifically, the notice must include the following:

1. The proposed rule.
2. The substance and purpose of the proposed rule.
3. A summary of the proposed rule.
4. The authority proposing the rule, or the requisite rule-making authority.
5. All alternatives to the proposed rule that were considered by the Commission and the reasons for not moving forward with the alternatives.
6. Any unpublished studies, reports, or written materials that the Commission relied on in proposing the rule.
7. A qualitative and quantitative analysis of the anticipated costs and benefits of the proposed rule.
8. A reference to every regulation or provision in a regulation to be amended or revoked.

<sup>9</sup> *Securities Act*, R.S.O. 1990, c. S.5, s 2.1(6), online: < <https://www.ontario.ca/laws/statute/90s05#BK4> >.

allocated to OBSI analysis by legal, compliance, governance, and executive teams along with the registrants who are the subject matter of the complaint.<sup>10</sup> Smaller firms have less staff and would need to incur the cost of outside consultant and legal support.

The OSC has recognized that they do not have the required data to estimate the potential impact on firms' insurance costs, though there should be no presumption of the availability of insurance.

A reduction in legal costs with being a responding party to civil proceedings is not special to this proposal. The number of civil proceedings has been in general decline for some years due to alternative dispute resolution options which include mediation and arbitration.

### iii) OTHER DOMESTIC PRACTICES

The term “ombuds” is used to communicate to the widest possible community and is not intended to discourage others from using alternatives.<sup>11</sup> It is one of multiple alternative dispute resolution options. Mediation and arbitration are some others. By mandating the OBSI as the only dispute resolution service, investor choice is removed, and monopoly is created.

An ombudsperson is to remain informal, neutral, confidential, and independent. To maintain these key qualities, an ombudsperson would typically not produce any findings or make binding decisions, which are generally limited to arbitrations (as another form of alternative dispute resolution where the process may be adjusted to the circumstances) and the formal court system.

For valid reasons, non-binding authority for ombuds and ombuds services is common. Enclosed at Schedule “A” is a lengthy list of ombuds and ombuds services in Canada and internationally that have non-binding authority, in both financial and non-financial sectors. These were previously brought to the CSA's attention by our letter dated March 13, 2023.<sup>12</sup>

### iv) INTERNATIONAL PRACTICES

The proposed framework cannot be described as representative of international best practices.

The International Organization of Securities Commissions (**IOSCO**) does not include “binding authority” for an ombudsperson in its sound practice recommendations for complaint handling and redress systems for retail investors.<sup>13</sup>

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<sup>10</sup> At a bare minimum, costs related amendments to the Account and Services Agreements, websites, and complaint handling brochures should not be minimized.

<sup>11</sup> International Ombuds Association, “What Is an Organizational Ombuds?”, online: < [https://www.ombudsassociation.org/what-is-an-ombuds->](https://www.ombudsassociation.org/what-is-an-ombuds-).

<sup>12</sup> Letter from Investment Industry Association of Canada to Mr. Stan Magidson, Chair of the CSA and Chair and CEO of the Alberta Securities Commission (13 March 2023), online: < <https://iiac-accvm.ca/wp-content/uploads/2023/03/Letter-to-CSA-Non-Binding-Ombuds-re.-OBSI-March-13-2023.pdf> >.

<sup>13</sup> International Organization of Securities Commissions, Complaint Handling and Redress System for Retail Investors Final Report, FR01/2021 (January 2021), online: < <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD670.pdf> >.

The International Monetary Fund (IMF) Financial Sector Assessment Program Review of Canada also stated that Canada’s oversight of market intermediaries is “high-quality in line with the IOSCO Objectives and Principles” and found that the “legal foundation underpinning securities regulation is generally strong.”<sup>14</sup>

Enclosed at Schedule “A” is a lengthy list of ombuds and ombuds services outside Canada, and within Canada, which have non-binding authority, in both financial and non-financial sectors. These were previously brought to the CSA’s attention by letter dated March 13, 2023.<sup>15</sup>

From the notably smaller number of examples provided by the CSA of financial ombuds services with binding decision-making authority, we note the inclusion of mediation,<sup>16</sup> a hearing or arbitration process,<sup>17</sup> and rights of appeal.<sup>18</sup> The examples also include those with monetary limits notably lower than the OBSI.<sup>19</sup>

From the examples, we also note an independent financial ombudsman authority is planned in Spain but not yet in effect, with jurisdiction limited to 20,000 euros.<sup>20</sup>

#### IV. THE BINDING AUTHORITY PROPOSAL AS DRAFTED RAISES PROCEDURAL FAIRNESS CONCERNS

According to the Proposal, in a review and decision stage, a senior staff member at the OBSI with no prior involvement in the dispute would have binding authority through an “essential process test,” which would grant the OBSI staff member unconstrained discretion to reach a decision, subject to judicial review.

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<sup>14</sup> International Monetary Fund, Canada Financial System Stability Assessment, IMF Country Report No. 19/177 (June 2019) at para. 67, p. 30, online: < <https://www.imf.org/en/Publications/CR/Issues/2019/06/24/Canada-Financial-System-Stability-Assessment-47024> >

<sup>15</sup> Letter from Investment Industry Association of Canada to Mr. Stan Magidson, Chair of the CSA and Chair and CEO of the Alberta Securities Commission (13 March 2023), online: < <https://iiac-accvm.ca/wp-content/uploads/2023/03/Letter-to-CSA-Non-Binding-Ombuds-re-OBSI-March-13-2023.pdf> >.

<sup>16</sup> Taiwan’s Financial Ombudsman Institution (FOI), online: < [www.foi.org.tw](http://www.foi.org.tw) >; and Singapore’s Financial Industry Disputes Resolution Centre (FIDReC), online: < <https://www.fidrec.com.sg/> >; and Netherlands’ Dutch Institute for Financial Disputes (Kifid), online: < <https://www.kifid.nl/about/> >.

<sup>17</sup> Singapore’s Financial Industry Disputes Resolution Centre (FIDReC), online: < <https://www.fidrec.com.sg/> >; and Netherlands’ Dutch Institute for Financial Disputes (Kifid), online: < <https://www.kifid.nl/about/> >.

<sup>18</sup> Taiwan’s Financial Ombudsman Institution (FOI), online: < [www.foi.org.tw](http://www.foi.org.tw) >; and Netherlands’ Dutch Institute for Financial Disputes (Kifid), online: < <https://www.kifid.nl/about/> >; and South Africa’s Office of the Ombud for Financial Services Providers (FAIS), online: < <https://www.faisombud.co.za/> >; and Czech Republic’s Office of the Financial Arbitrator Government Agency, online: < <https://www.finarbitr.cz/> >; and Ireland’s Financial Services and Pensions Ombudsman (FSPO), online: < <https://www.fspo.ie/our-services/> >.

<sup>19</sup> Taiwan’s Financial Ombudsman Institution (FOI) (approximately \$51,555.90 Cdn); Singapore’s Financial Industry Disputes Resolution Centre (FIDReC) (approximately \$100,627.08 Cdn); Netherlands’ Dutch Institute for Financial Disputes (Kifid) (ruling is non-binding if allocates an amount to the consumer that is higher than approximately \$73,956.47 Cdn or, for banks and insurers, \$184,981.18 Cdn); South Africa’s Office of the Ombud for Financial Services Providers (FAIS) (approximately \$57,146 Cdn).

<sup>20</sup> Herbert Smith Freehills, “Spain – Draft Bill on the Creation of an Independent Financial Ombudsman: a new process for obtaining a binding resolution for financial claims of less than €20,000” (27 April 2022), online: < <https://hsfnotes.com/fsrandcorpcrime/2022/04/27/spain-draft-bill-on-the-creation-of-an-independent-financial-ombudsman-a-new-process-for-obtaining-a-binding-resolution-for-financial-claims-of-less-than-e20000/> >.



## **i) General Concerns**

The binding authority proposal in essence provides the OBSI with an unrestrained latitude in process and result, vulnerable to misapplication.

There is vague reference to “expanded procedural tools” and “additional details regarding the processes of the identified Ombud service [that] would be set out in the identified Ombud service’s governance documents or within harmonized orders – including in respect of when a recommendation is deemed to be a final decision”.<sup>21</sup> These “additional details” should form part of any regulatory proposal and part of the public comment process at first instance. Implementation is a key “pre-” as opposed to “post-” policy concern.

As stated previously, the OBSI’s current fluid process involves preliminary views subject to input by the parties and possible subsequent amendment to reflect facts, documents, and more appropriate loss methodology. The OBSI process enhancements as outlined briefly in this correspondence are long-standing and impact responses to OBSI “recommendations.” In other words, what constitutes a “recommendation,” or an “objection” is highly unclear. The OBSI may issue an initial “recommendation” that has gaps, needs adjustment, and requires other considerations, which results in an amended (lower) recommendation.

The review by an OBSI staff member and therefore the lack of independent review gives rise to institutional bias and conflict of interest concerns.

Rather, for binding authority to provide parties with fair redress in investor disputes, it should include a neutral, third party, experienced trier of fact, examinations with credibility assessments of all parties, and objective reliance on documents, regulation, and law. Further, appeal rights would preserve accountability and therefore fairness for all.

The Proposal also envisions that “the complainant or the identified Ombud service would be able to file the ... decision with a superior court as an order of the court, making it enforceable”. A court order is usually public and may require the parties to the order to agree to its terms, or have those terms determined by the court, which may further complicate the process.

Preservation of the firm’s relationship with the complainant is identified as a benefit of the proposed process. Investors and firms may resolve their continued relationships, which need not be a regulatory policy concern.

## **ii) The Essential Process Test**

We are unaware of a test by this name being used in administrative decisions or relied upon by Canadian courts. It is unclear how this unestablished test, which has not been explained in any detail by the CSA, would address existing issues relating to vagueness, transparency and bias and refrain from perpetuating them. The “essential process test” is also unlikely to survive court scrutiny in the judicial review contemplated by the Proposal.

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<sup>21</sup> The Proposal at para. 4(c)(ii), p. 10.

The complete discretion is both unusual and ambiguous. Instead, a uniform and consistent standard of procedural safeguards to give the parties certainty and stability is needed. It is also in keeping with the expectations of virtually all administrative decisionmakers.

### iii) Principles of Procedural Fairness/Natural Justice

Procedural fairness (or natural justice) is needed to address the concerns raised including concerns regarding an “essential process test”. Basic principles of procedural fairness or natural justice include, at common law, the right to be heard or the right to a fair hearing,<sup>22</sup> and the right to an unbiased and independent decision maker.<sup>23</sup> The right to be heard consists of, among other things, the right to obtain reasons for a decision, the right to counsel, the right to an oral hearing, the right to cross-examine witnesses, and the right to fair and reasonable notice of a decision.

These common law principles of procedural fairness or natural justice may and should apply to the OBSI’s current non-statutory framework.<sup>24</sup>

## V. AN INTEGRATED AND HARMONIOUS DISPUTE RESOLUTION REGIME WHICH PRESERVES INVESTOR OPTIONS IS NEEDED

### i) Practical Considerations

Should the CSA adopt a binding decision-making framework pursuant to legislative amendments, principles of procedural fairness under administrative law would nonetheless apply.<sup>25</sup> The OBSI’s decisions would have to follow specified parameters that concern fairness, bias, evidence gathering and consideration, legal representation, and appeals.

The cost and complexity of uniform legislative amendments throughout Canada’s provinces and territories and the resulting overhaul and restructure of the OBSI necessitates a consideration of better options.

### ii) Proposed Amendments

The Proposal should be amended. The suggested amendments expand dispute resolution options for investors and draw from available frameworks to:

- a. provide consistency across provinces and territories.
- b. reflect core fairness attributes.
- c. include external mediation services.

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<sup>22</sup> *Supermarchés Jean Labrecque Inc v. Flamand*, [1987] 2 SCR 219 at 233; *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 SCR 3; *Canadian Pacific Railway Co v. Canada (Attorney General)*, 2018 FCA at para 56.

<sup>23</sup> *Old St Boniface Residents Assn Inc v. Winnipeg (City)*, [1990] 3 SCR 1170 at para 27; *Newfoundland Telephone Co v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623 at para 22.

<sup>24</sup> See, for example, *Mattamy (Downsview) Limited v KSV Restructuring Inc. (Urbancorp)*, 2023 ONSC 3013.

<sup>25</sup> The procedures that apply in any given administrative decision-making process are determined by the framework set out in the Supreme Court’s decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1991] 2 SCR 817 at para 21, citing *Knight v. Indian Head School Division No. 19*, [1990] 1 SCR 653.

d. integrate the CIRO Arbitration Program and Commission tribunals.

**a. Consistency Across Provinces and Territories**

Should a binding form of dispute resolution be adopted through NI 31-103, it should achieve uniformity across provinces and territories before any effective date. A lack of harmonization means inconsistency and unfairness for investors and operational complexity for registrants.

**b. Reflect Core Fairness Attributes**

Should a binding form of dispute resolution be adopted through NI 31-103, it should:

- be implemented by commissioners, lawyers and judges with securities law and industry knowledge.
- be bound by evidence and law.
- be binding on all parties.
- provide a minimum of 90 days between decision and appeal, with the ability to extend due to complexity.
- require transparent and consistent decision-making with (statutory) rights of appeal whereby arbitration agreements explicitly permit rights of appeal of fact and law to court.

Apart from a binding form of dispute resolution, investors should have the option to continue with non-binding recommendations through OBSI or select a third-party mediation service outside of OBSI, as further discussed below.

**c. Include External Mediation Services**

Currently, firms in Canada (except in Québec) must, under subsection 13.16(6) of NI 31-103, “take reasonable steps to ensure that OBSI will be the [independent dispute resolution *or mediation*] service that is made available to the client”.<sup>26</sup>

Investors should be able to avail themselves of the many other high-quality mediation services that are broadly available.

We note that in Québec, the Autorité des marchés financiers (**AMF**) provides mediation services to retail investors and is participating in the CSA consultation by proposing to maintain the exemption applicable to firms registered in Québec regarding the dispute resolution services requirements under NI 31-103.

We recommend the following proposed amendment to section 13.16 of NI 31-103 be deleted:

(6.1) Despite subsection (6), if there is an identified Ombud service, the registered firm must make the identified ombudservice available to the client for the purposes of the requirement to make available an independent dispute resolution or mediation service under subsection (4).

Rather, the registered firm should be able to provide the investor with mediation services instead of the OBSI. Similarly, the OBSI should be required to recommend third-party mediation to the parties as part of their process.

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<sup>26</sup> See NI 31-103, s. 13.16(6). [Emphasis added.]

#### **d. Integrate the CIRO Arbitration Program and Commission Tribunals**

Should a binding form of dispute resolution be adopted through NI 31-103, the Proposal should be amended as follows:

The investor retains the option for a non-binding recommendation from the OBSI, subject to enhancements to the OBSI as listed in this correspondence.

Should either party dispute the OBSI's recommendation, the party has the option to proceed to a binding resolution for claims of \$50,000 or more. According to the Proposal, the OBSI's settlement recommendations of \$50,000 or more draw more differences of opinion.<sup>27</sup> Further consultation is required to determine how size of a claim is fairly determined.

If the registered firm is a CIRO member, the complaint is referred to the CIRO arbitration program, which has not been considered in the Proposal. If the registered firm is not a CIRO member, the complaint is referred to the CSA tribunal for a hearing or, should the tribunal or parties prefer, a settlement conference, in the jurisdiction where the investor resides.

All hearings would be subject to a uniform and consistent arbitration agreement, consistent with principles of procedural fairness and with statutory rights of appeal (as distinguished from judicial review), which explicitly permit rights of appeal of fact and law to court.

Should the investor require funding for this process, application may be made to the applicable Commission, who would provide investor funding, from surplus revenue,<sup>28</sup> fines or penalties,<sup>29</sup> or otherwise, where the investor's financial circumstances so merit.

## **VI. CSA OVERSIGHT**

The Proposal contemplates "a more comprehensive oversight regime" considering proposed binding powers. Additional oversight means less independence and more costs. Minimal details of the proposed oversight regime are provided. These details should form part of any regulatory proposal and part of the public comment process at first instance. As stated, implementation is a key "pre-" as opposed to "post-" policy concern.

## **VII. LEGISLATIVE CONSIDERATIONS**

The Proposal states that "nothing in this Notice or the decision to publish the Notice should be considered as an indication of whether such legislative amendments will be made in any jurisdiction".<sup>30</sup> It also states, "At this time, governments in CSA jurisdictions have made no decision to proceed with the legislative

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<sup>27</sup> The Proposal at para. 3(c)(i), Table 1 ("2018 – 2022 Investment Cases Settled Below OBSI's Recommended Amount") at p. 6.

<sup>28</sup> For example, the OSC's Statement of Financial Position as at March 31, 2023 shows an operating surplus of \$143,088,647: OSC, Financial Statements For the Fiscal Year ended March 31, 2023 (23 June 2023) at p. 5, online: < [https://www.osc.ca/sites/default/files/2023-07/publications\\_rpt\\_2023\\_osc-financial\\_en.pdf](https://www.osc.ca/sites/default/files/2023-07/publications_rpt_2023_osc-financial_en.pdf) >.

<sup>29</sup> For example, letter from Investment Industry Association of Canada to Ontario Ministry of Finance (18 September 2023), online: < [https://iiac-accvm.ca/wp-content/uploads/2023/09/IIAC\\_Recommendations-for-OSC-Enforcement-Money.pdf](https://iiac-accvm.ca/wp-content/uploads/2023/09/IIAC_Recommendations-for-OSC-Enforcement-Money.pdf) >.

<sup>30</sup> The Proposal at para. 4(a)(i), p. 8.

amendments, and any legislative amendment proposed by local governments will be subject to change during the drafting process.”<sup>31</sup>

Notwithstanding the above, the Government of Saskatchewan proceeded with Bill 150 seeking to designate an independent dispute resolution service with binding authority, which the IIAC requested have the benefit of public comment and be removed from the order paper.<sup>32</sup>

We ask that the CSA actively discourage any legislative review until comments to the Proposal have been meaningfully considered, adjustments made for further public comment, and those additional comments considered.

Answers to the CSA’s questions are enclosed at Schedule “B”.

We are happy to discuss the observations provided and recommendations made in this correspondence with any member of the CSA.

Respectfully submitted,

**Investment Industry Association of Canada**

*Laura Paglia*

Per: Laura Paglia, President & Chief Executive Officer

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<sup>31</sup> The Proposal, Annex E at para. 6, p. 32.

<sup>32</sup> Letter from Investment Industry Association of Canada to Mr. Terry Dennis, Chair, Standing Committee on Intergovernmental Affairs and Justice (23 November 2023), online: < <https://iiac-accvm.ca/wp-content/uploads/2023/11/IIAC-Letter-re-Bill-150-The-Securities-Amendment-Act-2023-Saskatchewan.pdf> >; and letter from Investment Industry Association of Canada to the Hon. Bronwyn Eyre, Minister of Justice and Attorney General (22 December 2023), online: < <https://iiac-accvm.ca/wp-content/uploads/2024/01/Bill-150-12.22.2023.pdf> >.

**SCHEDULE "A"**

**Non-Binding Ombuds and Ombuds Services in the  
Financial and Non-Financial Sectors  
in Canada and Internationally**

*(See attached.)*

## NON-BINDING OMBUDS AND OMBUDS SERVICES

The following list is based upon a review of publicly available information. Based on this information, ombuds and ombuds services listed below appear to have non-binding authority.

### I. Non-Binding Ombuds and Ombuds Services in the Financial Sector

#### a. CANADA

##### 1.) General Insurance OmbudService (GIO)

- Jurisdictions include federally regulated property and casualty insurers, and insurance companies in Alberta<sup>1</sup>, British Columbia<sup>2</sup>, Ontario<sup>3</sup>, Nova Scotia<sup>4</sup>, Saskatchewan.<sup>5</sup> In some jurisdictions, insurance companies doing business in that jurisdiction are required to be members of the GIO; other provincially regulated insurance companies have joined the GIO voluntarily.<sup>6</sup>
- GIO is an independent dispute resolution service providing free and impartial help for Canadian consumers of home, automobile and business insurance to resolve their complaints.<sup>7</sup>
- Non-binding recommendations may be made by the GIO's Senior Adjudicative Officer regarding the resolution of complaints, which are not binding upon the member insurance company or the consumer. If a company does not follow a recommendation within a reasonable time, the GIO should publicly disclose that the company has failed to comply.<sup>8, 9, 10, 11</sup>

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<sup>1</sup> AB: *Insurance Act*, RSA 2000, c I-3, s 819.1(1), online: <<https://canlii.ca/t/81wn>> – Every licensed insurer is a member of GIO.

<sup>2</sup> BC: *Financial Institutions Act*, RSBC 1996, c 141, online: <<https://canlii.ca/t/8415>> ; *Insurer Complaints Regulation*, BC Reg 206/2011, s 2(1), online: <<https://canlii.ca/t/8qhh>> – Requirement to be a member of the OmbudService for Life & Health Insurance or the GIO.

<sup>3</sup> ON: Financial Services Regulatory Authority of Ontario, “How to Resolve an Auto Insurance Complaint”, online: *FSRA Website* <<https://www.fsrso.ca/how-resolve-auto-insurance-complaint>> – Provides GIO link.

<sup>4</sup> NS: Finance and Treasury Board, “Consumer information”, online: *New-Brunswick Government website* <<https://www.novascotia.ca/finance/en/home/insurance/consumerinformation/default.aspx.html>> – Provides GIO link.

<sup>5</sup> SK: *The Insurance Act*, SS 2015, c I-9.11, s 10-46(1), online: <<https://canlii.ca/t/9332>> – Every insurer is a member of the GIO.

<sup>6</sup> General Insurance OmbudService, “Annual Report 2020-2021” (2021), at 11, online (pdf): <[GIO\\_Annual\\_report\\_2020-2021\\_r1.indd \(giocanada.org\)](https://giocanada.org/2021_r1.indd)>.

<sup>7</sup> General Insurance OmbudService, “About us”, online: *GIO Website* <<https://giocanada.org/about/>>.

<sup>8</sup> *GIO Terms of Reference for Dispute Resolution*, June 2012, ss II(2) – “Non-Binding Recommendation(s)” definition, and III(5)(e), online (pdf): <<https://giocanada.org/wp-content/uploads/2021/09/GIO-Process-English-Terms-of-Reference-June-2012.pdf>>.

<sup>9</sup> Also see: General Insurance OmbudService, “Our Process: Step Four – Senior Adjudication”, and “Our Process: After Senior Adjudication”, online: *GIO Website* <<https://giocanada.org/how-the-process-works/>>; and, Canadian Council of Insurance Regulators, *Insurance OmbudServices Cooperation and Oversight Framework* (2015), Guideline No. 5, Section B.7 and B.8, online (pdf): <[https://giocanada.org/wp-content/uploads/2021/11/Ombuds\\_Framework\\_En\\_June\\_2015.pdf](https://giocanada.org/wp-content/uploads/2021/11/Ombuds_Framework_En_June_2015.pdf)>.

<sup>10</sup> A member of the GIO must pay to it all assessments and levies made against the member by the GIO. *Insurance Act*, RSA 2000, c I-3, s 819.1(3), online: <<https://canlii.ca/t/81wn>>.

<sup>11</sup> See additional note in footnote 10. *The Insurance Act*, SS 2015, c I-9.11, s 10-46(3), online: <<https://canlii.ca/t/9332>>.

## 2.) Consumer Advocate for Insurance (CAI) – New Brunswick

- The CAI is the insurance ombudsman in New Brunswick.<sup>12</sup> They examines underwriting practices and guidelines of insurers, brokers and agents, and reports the use of any prohibited underwriting practices to the Superintendent; conducts investigations in relation to insurers, brokers and agents concerning premiums charged for insurance and the availability of contracts of insurance; responds to requests for information; conducts educational programs and carries out insurance related tasks or investigations as directed by the Legislative Assembly.<sup>13</sup> They may appear before the NB Insurance Board to represent the interests of consumers, present evidence, call witnesses, cross-examine witnesses and make representations.<sup>14</sup>
- The CAI makes recommendations with respect to its investigations.<sup>15</sup>

## 3.) OmbudService for Life & Health Insurance (OLHI)

- Jurisdictions include insurance companies in Alberta<sup>16</sup>, British Columbia<sup>17</sup>, Ontario<sup>18</sup>, Nova Scotia<sup>19</sup>, Saskatchewan.<sup>20</sup> In certain jurisdictions, insurance companies are required to be members of the OLHI.
- The OLHI is a free, independent and impartial alternative dispute resolution public service that helps Canadian life and health insurance consumers resolve their complaints.<sup>21</sup>
- The OLHI may make non-binding (voluntary) settlement recommendations to insurers that the consumer and the insurance company can choose to accept or not. If an insurance company member does not accept the non-binding recommendation(s) of the Senior Adjudicative Officer, the Executive Director of the Canadian Life and Health OmbudService (carrying on business as the OLHI) shall make that information public.<sup>22, 23, 24</sup>

## 4.) ADR Chambers Banking Ombuds Office (ADRBO)

- ADRBO is regulated as an External Complaints Body by the Financial Consumer Agency of Canada, and is governed by the *Bank Act* and the *Complaints (Banks, Authorized Foreign Banks*

<sup>12</sup> Consumer Advocate for Insurance, “About Us”, online: *CAI Website* <<https://www.insurance-assurance.ca/index>>.

<sup>13</sup> *Ibid* “Our Mandate”, online: <<https://www.insurance-assurance.ca/index>>.

<sup>14</sup> *Consumer Advocate for Insurance Act*, SNB 2004, c C-17.5, s 7(2), online: <<https://canlii.ca/t/88k0>>.

<sup>15</sup> *Ibid* s 9(1). We located no indication from publicly available information that the ombudsman’s recommendations are binding.

<sup>16</sup> AB: Alberta Government, “Insurance consumer complaints”, online: *Alberta Government Website* <<https://www.alberta.ca/insurance-consumer-complaints.aspx>> – Provides OLHI link.

<sup>17</sup> BC: *Financial Institutions Act*, *supra* note 2; *Insurer Complaints Regulation*, *supra* note 2 s 2(1) – Requirement to be a member of the OLHI or the GIO.

<sup>18</sup> ON: Financial Services Regulatory Authority of Ontario, “How to resolve a Life and Health Insurance Complaint”, online: *FSRA Website* <<https://www.fsrao.ca/consumers/life-and-health-insurance/how-resolve-life-and-health-insurance-complaint>> – Provides OLHI link.

<sup>19</sup> NS: Finance and Treasury Board, *supra* note 4 – Provides name of Canadian Life and Health Insurance OmbudService (i.e. OLHI).

<sup>20</sup> SK: *The Insurance Act*, *supra* note 5 s 10-47(1)(a) – Every insurer is a member of OLHI.

<sup>21</sup> OmbudService for Life and Health Insurance, “About OLHI”, online: *OLHI Website* <<https://olhi.ca/about-olhi/>>.

<sup>22</sup> *Ibid* Complaints page, under “Step 4” and under FAQs, “Are OLHI’s recommendations binding?”, and “What does non-binding mean?”, online: *OLHI Website* <<https://olhi.ca/complaints/#how-we-help>>.

<sup>23</sup> *OLHI Terms of Reference*, “Non-Binding Recommendation(s)” definition, and section “Principal Powers and Duties of the CLHIO” – (e), and section “Case Referral and Management Procedures” – “Senior Adjudicative Phase”, online: <<https://olhi.ca/about-olhi/terms-of-reference/>>.

<sup>24</sup> A member of the OLHI shall pay to it all assessments and levies made against the member by the OLHI. *The Insurance Act*, *supra* note 5, s 10-47(3).



and External Complaints Bodies) Regulations. Member banks include Scotiabank, Scotiabank, Tangerine; TD Bank Group; Royal Bank of Canada; National Bank of Canada.<sup>25</sup>

- ADRBO reviews complaints by customers of member banks after the customers have exhausted the bank's internal complaint system. It is an industry ombudsman that operates independently from the participating banks.<sup>26</sup>
- ADRBO may make recommendations, which are not binding on the member bank or the complainant.<sup>27</sup>

## b. INTERNATIONAL

### 1.) **Autorité des marchés financiers (AMF) Ombudsman – France**

- The AMF Ombudsman helps investors settle problems with their financial intermediary or an issuer of securities an investor has invested in. Mediation offered is a public service provided free of charge.<sup>28</sup> The mediator of the AMF is appointed by the president of the AMF.<sup>29</sup>
- Mediation is optional and the mediation procedure is never binding. The AMF Ombudsman can make suggestions but cannot impose them. The parties decide whether or not to follow the Ombudsman's favourable or partially favourable recommendations; in the event of an unfavourable recommendation, the Ombudsman's task is complete and the case is closed.<sup>30, 31</sup>

### 2.) **Arbitro Bancario Finanziario (Banking and Financial Ombudsman<sup>32</sup>) (ABF) – Italy**

- The ABF is an independent and impartial body, assisted by the Bank of Italy. The ABF is an alternative dispute resolution scheme for disputes between customers, and banks and other financial intermediaries, concerning banking and financial transactions and services.<sup>33</sup>
- The ABF's decisions are not legally binding; however, if an intermediary does not comply with an ABF decision, its non-compliance is made public on the ABF's website for five years, and highlighted on the home page of the intermediary's website for six months.<sup>34</sup>

<sup>25</sup> ADR Chambers Banking Ombuds Office, "About us" and "Member Banks" tabs, online: *ADRBO Website* <[https://bankingombuds.ca/?page\\_id=1376&lang=en](https://bankingombuds.ca/?page_id=1376&lang=en)>.

<sup>26</sup> *Ibid.*

<sup>27</sup> *ADRBO Terms of Reference*, 2015, s 27, online (pdf): <<https://bankingombuds.ca/wp-content/uploads/2022/12/ADRBO-Terms-of-Reference.pdf>>.

<sup>28</sup> Autorité des marchés financier (France), "The AMF Ombudsman", online: *AMF (France) Website* <<https://www.amf-france.org/en/amf-ombudsman>>.

<sup>29</sup> *Code monétaire et financier*, s L621-19(I), online:

<[https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000038588268?init=true&page=1&query=L621-19%2C+Code+mon%C3%A9taire+et+financier+&searchField=ALL&tab\\_selection=all](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038588268?init=true&page=1&query=L621-19%2C+Code+mon%C3%A9taire+et+financier+&searchField=ALL&tab_selection=all)>.

<sup>30</sup> *Code de la consommation*, s L612-1 & L612-4, online:

<[https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000032224798](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032224798)> – Mediation is optional.

<sup>31</sup> Autorité des marchés financier (France), "How the case is dealt with?", online: *AMF (France) Website* <<https://www.amf-france.org/en/amf-ombudsman/how-mediation-works/how-case-dealt/how-case-dealt>>; also, "Ombudsman's recommendation" <<https://www.amf-france.org/en/amf-ombudsman/how-mediation-works/how-case-dealt/ombudsmans-recommendation>>.

<sup>32</sup> Arbitro Bancario Finanziario (Translated as "Banking and Financial Ombudsman"), "Homepage", online: *ABF Website* <<https://www.arbitrobancariofinanziario.it/homepage/index.html?com.dotmarketing.htmlpage.language=3>>.

<sup>33</sup> *Ibid* "About the ABF", online: <<https://www.arbitrobancariofinanziario.it/abf/index.html>>.

<sup>34</sup> *Ibid.*

### 3.) Financial Industry Regulatory Authority (FINRA) – United States

- The FINRA Ombudsman is an independent, neutral, and confidential resource for questions or concerns about FINRA, which regulates the U.S. brokerage industry. The ombudsman handles concerns or complaints about FINRA operations, enforcement or other FINRA activities.<sup>35</sup>
- The FINRA Ombudsman does not make binding decisions or mandate policies.<sup>36</sup>

### 4.) U.S. Securities and Exchange Commission (SEC) – United States

- The SEC Ombudsman was established by the Securities Exchange Act of 1934. The Ombudsman helps retail investors with their concerns, including those who feel they have exhausted all other SEC resources. The Ombudsman also assists individuals with issues relating to self-regulatory organizations the SEC oversees.<sup>37</sup>
- The SEC Ombudsman cannot make binding decisions or mandate policies.<sup>38</sup>

### 5.) Gemeinsame Schlichtungsstelle der österreichischen Kreditwirtschaft (Joint Conciliation Board of the Austrian Banking Industry) (JCBABI) – Austria

- The JCBABI is an institution for out-of-court settlement of disputes relating to obligations within the scope of a banking transactions, pursuant to the *Austrian Banking Act*. The JCBABI consists of an independent and autonomous mediator (ombudsperson) and the secretariat of the Conciliation Board.<sup>39</sup>
- The Ombudsman may submit a settlement proposal to the parties to the dispute. Both parties can agree to or reject the proposed solution.<sup>40</sup>

### 6.) Ombudsfin – Belgium

- Ombudsfin is an independent and impartial qualified entity within the meaning of the Code of Economic Law which settles out-of-court disputes arising between a financial institution affiliated to Ombudsfin and a consumer concerning the performance of a sales or service contract or the use of a product in connection with the consumer’s private banking and financial operations. Ombudsfin is a mediation service. Some of the institutions that may be affiliated with the service include banks, credit companies, stockbroking firms or portfolio managers.<sup>41, 42</sup>

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<sup>35</sup> Financial Industry Regulatory Authority (FINRA), “About”, online: *FINRA Website* <<https://www.finra.org/about/office-ombudsman>>; and, *Ibid* “Ombudsman - Frequently Asked Questions”, Question 3, online: <<https://www.finra.org/about/office-ombudsman/ombudsman-frequently-asked-questions#1-10>>.

<sup>36</sup> *Ibid* “Ombudsman - Frequently Asked Questions”, Question 4, online: <<https://www.finra.org/about/office-ombudsman/ombudsman-frequently-asked-questions#1-10>>.

<sup>37</sup> Securities and Exchange Commission (SEC), “Ombudsman – Who We Help” and “What law established the Ombudsman role at the SEC?”, online: *SEC Website* <<https://www.sec.gov/ombudsman>>.

<sup>38</sup> *Ibid* “The Ombudsman cannot”, online: <<https://www.sec.gov/ombudsman>>.

<sup>39</sup> Gemeinsame Schlichtungsstelle der Österreichischen Kreditwirtschaft (Translated as: “Joint Conciliation Board of the Austrian Banking Industry”), “Questions and Answers” Question 1, online (pdf): <<https://www.bankenschlichtung.at/upload/downloads/QuestionandAnswer.pdf>>.

<sup>40</sup> (translation) Gemeinsame Schlichtungsstelle der Österreichischen Kreditwirtschaft, under “Solution”, online: *JCBABI Website* <<https://www.bankenschlichtung.at/service.html#worueber>>; and, Gemeinsame Schlichtungsstelle der Österreichischen Kreditwirtschaft, *supra* note 39 “Questions and Answers, Question 12”, online: <<https://www.bankenschlichtung.at/upload/downloads/QuestionandAnswer.pdf>>.

<sup>41</sup> *Procedural Rules Ombudsfin ASBL*, Chapter I, art 1, online (pdf): <<https://www.ombudsfin.be/sites/default/files/Rules%20of%20Procedure%20Ombudsfin.pdf>>.

<sup>42</sup> Ombudsfin, “Ombudsman for financial services”, online: *Ombudsfin Website* <<https://www.ombudsfin.be/en/individuals/home>>; and, *Ibid* (translation) “FAQ, 1.1”, online: <<https://www.ombudsfin.be/nl/particulieren/faq/>>.

- At the end of the mediation process, the Ombudsman takes a position on the dispute and issues a non-binding opinion. Where appropriate, it shall make a recommendation. The opinions of the Ombudsman are not binding on either the customer or financial institutions,<sup>43</sup> with the exception of its opinions on basic banking services.<sup>44</sup> Ombudsfın may annul a credit institution’s decision to refuse or terminate the basic banking service; its ruling is binding on the credit institution.<sup>45</sup>

## 7.) Rzecznik Finansowy (Financial Ombudsman) – Poland

- The Financial Ombudsman is authorized to take action in respect of customer protection regarding financial services<sup>46</sup>; the Financial Ombudsman Office operates pursuant to legislation.<sup>47</sup> The Financial Ombudsman supports customers in disputes with financial market entities, including financial institutions, banks and insurers.
- The Financial Ombudsman is not able to issue a decision binding the financial market entity. This means that the financial market entity may not change its position.<sup>48</sup>

## 8.) Swiss Banking Ombudsman (SBO) – Switzerland

- The SBO acts as an information and mediation office without jurisdictional authority for clients of member institutions of the Swiss Bankers Association (SBA), and for clients of non-member institutions affiliated to the SBA for this purpose, regarding specific questions and complaints concerning banking and financial services provided by member institutions. The SBO is supported by the Swiss Banking Ombudsman Foundation, which was established by the SBA.<sup>49</sup>
- The SBO submits a negotiated solution to the parties to the dispute. This proposal is not binding, and the parties are free to decide whether to follow it or take other measures. The SBO is not an authority that can make binding judgements on the conduct of the financial business, nor one that has the power to impose penalties. The SBO’s task is to try to resolve disputes by mutual agreement between the parties through mediation and has no decision-making power. The SBO can propose and recommend solutions to the parties, but cannot give binding instructions.<sup>50</sup>

<sup>43</sup> *Ibid* “Procedure”, “Opinion of the Ombudsman”, online: <<https://www.ombudsfın.be/en/individuals/introduce-complaint/procedure/>>; and, *Ibid* (translation) “FAQ, 2.14”, online: <<https://www.ombudsfın.be/nl/particulieren/faq/>>.

<sup>44</sup> Includes the opening of a payment account; deposit/withdrawal of cash to/from a payment account and related services; and, execution of payment transactions, including transfers of funds, direct debits, card or similar device payments and wire transfers (including standing orders).

<sup>45</sup> Matthias Schelkens, “Belgium guarantees basic banking service for undertakings”, *Linklaters* (May 23, 2021), online: <<https://www.linklaters.com/en/insights/blogs/bankinglitigationlinks/2021/may/belgium-guarantees-basic-banking-service-for-undertakings>>; and, *Procedural Rules Ombudsfın*, *supra* note 41 Chapter V, art 14.

<sup>46</sup> Komisja Nadzoru Finansowego (Translated as “The Polish Financial Supervision Authority (UKNF)”), online: *UKNF Website* <[https://www.knf.gov.pl/en/CONSUMERS/Consumer\\_Protection\\_on\\_Financial\\_Services\\_Market](https://www.knf.gov.pl/en/CONSUMERS/Consumer_Protection_on_Financial_Services_Market)>.

<sup>47</sup> (translation) *Statut Biura Rzecznika Finansowego* (Translated as “Statute of the Financial Ombudsman Office”), §1, 2021, online: *Rzecznik Finansowy Website* <<https://rf.gov.pl/o-nas/statut-biura-rzecznika-finansowego/>>.

<sup>48</sup> (translation) *Rzecznik Finansowy*, “How do we help?”, online: *Rzecznik Finansowy Website* <<https://rf.gov.pl/jak-pomaga-rzecznik-finansowy/>>; and, *Rzecznik Finansowy*, “Interventional proceedings” and “What does the intervention procedure look like and how long does the intervention procedure take?”, online: *Rzecznik Finansowy Website* <<https://rf.gov.pl/postepowania-intwencyjne/>>.

<sup>49</sup> Ombudsman des Banques Suisse (French), Schweizerischer Banken Ombudsman (German) (Translated as “Swiss Banking Ombudsman”), “Information and mediation office”, online: *Swiss Banking Ombudsman Website* <<https://bankingombudsman.ch/en/complaint/>>; and, *Ibid* “About us” and “Banking Ombudsman”, online: <<https://bankingombudsman.ch/en/about-us/>>.

<sup>50</sup> *Ibid* “About us” and “Neutral mediator”, online: <<https://bankingombudsman.ch/en/about-us/>>; and, *Ibid* “Frequently asked questions”, Question 20, online: <<https://bankingombudsman.ch/en/complaint/frequently-asked-questions/>>.

## 9.) Ελληνικός Χρηματοοικονομικός Μεσολαβητής (Hellenic Financial Ombudsman (HFO)) – Greece

- The HFO is a unit of the Hellenic Financial Ombudsman – Nonprofit Alternative Dispute Resolution Organisation (HFO – ADRO), a specialized Alternative Dispute Resolution (ADR) entity, registered in the Register of ADR entities of the General Secretariat for Trade and Consumer Protection of the Ministry of Economy and Development.<sup>51</sup> HFO examines impartially and free of charge disputes regarding the provision of banking and investment products and services, by banks and investment companies operating in Greece, to consumers and businesses, and mediates them.<sup>52</sup>
- HFO may deliver a non-binding recommendation for resolving a dispute. Both parties must declare in writing whether they accept the recommendation in full and final settlement of the dispute. If one of the parties does not accept its recommendation then HFO drafts a record of failure and notifies both parties in writing.<sup>53</sup>

## II. Non-Binding Ombuds and Ombuds Services in Non-Financial Sectors

### a. CANADA

#### 1.) Québec Ombudsman

- The Ombudsperson is appointed by all the Members of the National Assembly of Québec on a motion by the Premier.<sup>54</sup> The Ombudsman is impartial, independent and reports to the National Assembly. Among other roles, it intervenes in cases of breaches of rights, abuse, negligence, inaction or errors that affect citizens in their dealings with a Government of Québec department or agency, or a health and social services institution.<sup>55</sup>
- The Ombudsman has the power to recommend but cannot impose their opinions as a court would.<sup>56</sup>

#### 2.) Ombudsman Ontario

- The Ombudsman is an independent and impartial Officer of the Legislature who resolves complaints about government and public sector bodies, French language services and services provided in the child protection sector.<sup>57, 58</sup>
- The Ombudsman’s recommendations are not binding. Municipalities or government organizations do not have to follow them.<sup>59</sup>

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<sup>51</sup> Ελληνικός Χρηματοοικονομικός Μεσολαβητής-Αστική Μη Κερδοσκοπική Εταιρεία Εναλλακτικής Επίλυσης Διαφορών (Translated as “Hellenic Financial Ombudsman – Non-profit Alternative Dispute Resolution Organisation”), “Profile”, Section 1 (About us), online: *HFO Website* <<https://hobis.gr/en/profile/>>.

<sup>52</sup> *Ibid* “Profile”, Section 4 (Jurisdiction), online: <<https://hobis.gr/en/profile/>>.

<sup>53</sup> *Ibid* “Procedure”, steps 4 and 6, online: <<https://hobis.gr/en/procedure/>>.

<sup>54</sup> Le protecteur du citoyen (Translated as “Québec Ombudsman”) “Organization chart”, online: *Québec Ombudsman* <<https://protecteurducitoyen.qc.ca/en/about-us/organization-chart/>>.

<sup>55</sup> *Ibid* “Roles and mandates”, online: <<https://protecteurducitoyen.qc.ca/en/about-us/roles-and-mandates/>>; and, *Ibid* “Laws and prescriptive documents”, online: <<https://protecteurducitoyen.qc.ca/en/acts-and-prescriptive-documents/>>.

<sup>56</sup> *Ibid* “Handling your complaint” and “Investigation procedure”, online: <<https://protecteurducitoyen.qc.ca/en/file-a-complaint/handling-your-complaint/>>.

<sup>57</sup> Ombudsman Ontario, “How We Work”, online: *Ombudsman Ontario Website* <<https://www.ombudsman.on.ca/what-we-do/how-we-work/>>.

<sup>58</sup> *Ombudsman Act*, R.S.O. 1990, c O.6, s. 14, online: <<https://www.ontario.ca/laws/statute/90o06#BK22>>.

<sup>59</sup> Ombudsman Ontario, *supra* note 57 “What to Expect When the Ombudsman Calls” and “How do we work?” online (pdf): <[https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/Documents/What-to-expect-when-the-Ombudsman-calls\\_1.pdf](https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/Documents/What-to-expect-when-the-Ombudsman-calls_1.pdf)>.

### 3.) Alberta Ombudsman Office

- The Ombudsman is an independent Officer of the Legislative Assembly of Alberta, is impartial and operates independently from the government, political parties and elected officials.<sup>60</sup> The Ombudsman has the legislated authority to respond to complaints of unfair treatment by authorities and organizations under the *Ombudsman Act*.<sup>61</sup>
- The Ombudsman may make recommendations it thinks fit, and may request the department, agency or administrative head of the professional organization or municipality to notify the Ombudsman within a specified time of the steps, if any, that it proposes to take to give effect to the Ombudsman's recommendations. If within a reasonable time no action is taken that seems to the Ombudsman to be adequate and appropriate, the Ombudsman may send a copy of their report to the appropriate Minister. If, within a reasonable time, no action is taken that seems to the Ombudsman to be adequate and appropriate, the Ombudsman may send a copy of their report and recommendations to the Lieutenant Governor in Council and may afterwards make any report to the Legislature on the matter that the Ombudsman thinks fit.<sup>62</sup>

### 4.) National Defence and Canadian Armed Forces Ombudsman (DND/CAF Ombudsman) – Canada

- The DND/CAF Ombudsman Office investigates complaints (for example, by current/former members or employees, or applicants) and serves as a neutral third party on matters related to the Department of National Defence and the Canadian Forces. The DND/CAF Ombudsman acts independently of the chain of command and managers, and reports directly to the Minister of National Defence.<sup>63</sup>
- The DND/CAF Ombudsman may make recommendations and shall be informed by the applicable authority of all steps taken or proposed to be taken in response to recommendations in the Ombudsman's report, including reasons for not following any recommendation. If the response received from the competent authority is insufficient, the Ombudsman may send a copy of their report to the Deputy Minister or Chief of the Defence Staff (CDS), who shall inform the Ombudsman of all steps taken or proposed to be taken in response to recommendations in the report, including reasons for not following any recommendation. If the response received from the Deputy Minister or CDS is insufficient, the Ombudsman may send a copy of their report to the Minister<sup>64</sup> (of National Defence).

### 5.) Office of the Taxpayers' Ombudsperson (OTO) – Canada

- The OTO works independently from the Canada Revenue Agency (CRA) and reviews service-related complaints to improve the service the CRA provides to taxpayers. The OTO also looks at issues affecting more than one person, or a segment of the population.<sup>65</sup>

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<sup>60</sup> Alberta Ombudsman, "Frequently Asked Questions" and "The Office" – "What is the Alberta Ombudsman's Office?", online: *Alberta Ombudsman Website* <<https://www.ombudsman.ab.ca/faqs/>>.

<sup>61</sup> *Ibid* "Frequently Asked Questions" and "The Office" – "Why is the Ombudsman necessary?", online: <<https://www.ombudsman.ab.ca/faqs/>> ; and, *Ombudsman Act*, RSA 2000, c O-8, s. 12, online: <<https://canlii.ca/t/825n>>.

<sup>62</sup> *Ibid Ombudsman Act*, ss 21(3), 21(4), and 21(5); also see s 21.1. While the ombudsman's recommendations may be escalated as described, we located no indication from publicly available information that their recommendations are binding.

<sup>63</sup> Government of Canada, Defence and Canadian Armed Forces Ombudsman, "Our mandate", online: *DND/CAF Website* <<https://www.canada.ca/en/ombudsman-national-defence-forces/information-about-office/mandate.html>>.

<sup>64</sup> *DAOD 5047-1, Office of the Ombudsman*, 1999, ss 17, 36, 37(1), 37 (2), and 37(3), online: <<https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5047/5047-1-office-of-the-ombudsman.html>>. While the ombudsman's recommendations may be escalated as described, we located no indication from publicly available information that their recommendations are binding.

<sup>65</sup> Government of Canada, "Office of the Taxpayers' Ombudsperson", online: *Government of Canada Website* <<https://www.canada.ca/en/taxpayers-ombudsperson.html>>.



- The OTO can make recommendations, but cannot enforce their recommendations. The OTO cannot overturn a decision of the CRA.<sup>66</sup>

#### 6.) Office of the Veterans Ombudsman (OVO) – Canada

- The OVO investigates complaints of unfair treatment by Veterans Affairs Canada (VAC). It conducts systemic investigations on issues impacting Veterans and makes recommendations to the Minister of Veterans Affairs to advance fair outcomes for Veterans and their families. It also receives information and referrals, helping Canadian Armed Forces and RCMP members, Veterans, and their families access VAC services and benefits in a fair and timely manner.<sup>67</sup>
- The OVO’s recommendations are not binding.<sup>68</sup>

#### 7.) Office of the Procurement Ombudsman (OPO) – Canada

- The OPO is a neutral and independent organization of the Government of Canada that helps resolve contracting disputes between businesses and the federal government, including complaints with respect to awarding and administration of contracts.
- The OPO provides recommendations on how to improve federal contracting issues and practices of departments for acquiring goods and services, and to strengthen federal procurement activities.<sup>69,70</sup>

#### 8.) Office of the Federal Ombudsperson for Victims of Crime (OFOVC) – Canada

- The OFOVC is an independent resource for victims in Canada, created to ensure the federal government meets its responsibilities to victims of crime.
- The Ombudsman may make recommendations to the federal government.<sup>71</sup>

#### 9.) Office of the Ombudsperson of the University of Toronto – Ontario

- The Ombudsperson is impartial and independent. It offers advice and assistance and can recommend changes in academic or administrative procedures, as part of the university’s commitment to ensuring that the rights of its individual members are protected.<sup>72</sup>
- The Ombudsperson does not have the authority to over-rule decisions, make university policy or replace established legislative, judicial or administrative rules or procedures. They can consider complaints, make informal enquiries, carry out formal reviews, draw conclusions, draw the attention of appropriate university authorities to problems, recommend a review of policy or

<sup>66</sup> *Ibid* “Frequently asked questions”, Question 17, online: <<https://www.canada.ca/en/taxpayers-ombudsperson/corporate/additional-resources/questions-answers-office-taxpayers-ombudsman-role.html>>.

<sup>67</sup> Government of Canada, “The Office of the Veterans Ombudsman (OVO)” online: *Government of Canada Website* <<https://ombudsman-veterans.gc.ca/en/the-office>>.

<sup>68</sup> *Order in Council, JUS-609755*, s 10(3), online: <<https://www.ombudsman-veterans.gc.ca/en/your-ombudsman/order>>.

<sup>69</sup> Office of the Procurement Ombudsman, “The Office”, “Our mandate” and “Our commitment”, online: *Government of Canada Website* <<https://opo-boa.gc.ca/bureau-office-eng.html>>; and, see link for list of legislation through which the OPO was created and became fully operational.

<sup>70</sup> *Ibid* “The Office of the Procurement Ombudsman”, online: <<https://opo-boa.gc.ca/index-eng.html>>. We located no indication from publicly available information that the ombudsman’s recommendations are binding.

<sup>71</sup> Office of the Federal Ombudsperson for Victims of Crime, “Who we are”, online: *Government of Canada Website* <<https://www.victimfirst.gc.ca/abt-apt/wva-qsn.html>>. We located no indication from publicly available information that the ombudsman’s recommendations are binding.

<sup>72</sup> University of Toronto, Office of the Ombudsperson, online: <<https://governingcouncil.utoronto.ca/ombudsperson>>.

procedure, recommend specific improvements, and can recommend changes to decisions and to the university's policies and procedures.<sup>73</sup>

#### **10.) Office of the Ombudsperson of the University of Ottawa – Ontario**

- The Ombudsperson provides an independent, impartial and confidential service to help all members of the university community around university-related issues (e.g., academic, administrative, service, workplace).<sup>74</sup>
- The Ombudsperson may not make decisions for the university or student unions.<sup>75</sup> The Ombudsperson may make recommendations.<sup>76</sup>

#### **11.) Ombudsman des étudiantes et des étudiants de l'Université de Sherbrooke (Ombudsman for University of Sherbrooke students) – Québec**

- The Ombudsman is accountable to the Board of Governors of the university. It is independent of the administration of the university in exercising its functions. The Ombudsman's role is mainly to intervene in situations submitted that contravene or may contravene students' rights.
- The Ombudsman makes recommendations to those directly affected (students, administrators, teachers, etc.) or to the administration of the university or to the directors of the units concerned.<sup>77</sup>

#### **12.) Office of the Ombudsperson for Students (University of British Columbia)**

- The Ombuds Office works with all UBC community members to ensure students are treated fairly and can learn, work and live in a fair, equitable and respectful environment.
- The Ombuds Office cannot decide who is right or wrong, or compel actions or overturn decisions.<sup>78</sup>

#### **13.) Ombudsman de Sherbrooke (Ombudsman of the City of Sherbrooke) – Québec**

- The Ombudsman is an independent, impartial mediator with a mandate to examine certain complaints by citizens against the municipal administration.
- The Ombudsman may make recommendations, which are shared with municipal authorities and the citizen complainant.<sup>79</sup>

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<sup>73</sup> *Ibid* University of Toronto Office of the Ombudsperson, *Terms of Reference of the Office of the University Ombudsperson* 2010, ss 1, 4.1, online: <<https://governingcouncil.utoronto.ca/secretariat/policies/ombudsperson-terms-reference-office-january-21-2010>>.

<sup>74</sup> University of Ottawa Office of the Ombudsperson, "FAQs", Questions 1 ("Who can use the Ombudsperson?"), 2 ("What is an Ombudsperson?"), and 4 ("What types of issues can commonly be brought to the Ombudsperson?"), online: <<https://www.uottawa.ca/about-us/office-ombudsperson/about-us/faq>>.

<sup>75</sup> *Ibid* "FAQs", Question 6 ("What are the restrictions on the Ombudsperson's ability to act?") <<https://www.uottawa.ca/about-us/office-ombudsperson/about-us/faq>>.

<sup>76</sup> University of Ottawa Office of the Ombudsperson, "Twelfth Annual Report: From June 1, 2021 to May 31, 2022" (2022), online (pdf): <<https://www.uottawa.ca/about-us/office-ombudsperson/recommendations>>; see example in *Ibid* at 21-22, s V(1) – not all of Ombudsperson's recommendations accepted.

<sup>77</sup> (translation) Ombudsman des étudiantes et des étudiants de l'Université de Sherbrooke, "Mieux connaître l'ombudsman", online: *Université de Sherbrooke Website* <<https://www.usherbrooke.ca/ombudsman/mieux-connaître-ombudsman>>. We located no indication from publicly available information that the ombudsman's recommendations are binding.

<sup>78</sup> University of British Columbia Office of the Ombudsperson, "How We Can Help", online: *University of British Columbia Website* <<https://ombudsoffice.ubc.ca/how-we-can-help/>>.

<sup>79</sup> (translation) Ombudsman de Sherbrooke, "Frequently Asked Questions", Questions 1 ("What is an ombudsman?"), 3 ("How can the Office of the Ombudsman help me?"), online: *Ombudsman de Sherbrooke Website* <<https://ombudsmansherbrooke.ca/faq/>>. We located no indication from publicly available information that the ombudsman's recommendations are binding.

#### 14.) Toronto Ombudsman - Ontario

- The Ombudsman is an Officer of Toronto City Council, accountable to Council as a whole, and deals with complaints about city services or city administration.<sup>80</sup>
- The Ombudsman has no power to order anyone to do anything, except co-operate with their enquiries and investigations. The Ombudsman may make recommendations of ways to improve city services in the public interest.<sup>81</sup>

#### 15.) Ombudsman de Montréal (Ombudsman of the City of Montréal)

- The Montréal City Council created the Ombudsman position. The Ombudsman handles certain complaints by citizens of unjust treatment by the Montréal administration and can intervene at her own initiative.<sup>82</sup>
- The Ombudsman may recommend any corrective measure she deems appropriate, though does not have the power to demand or order the city to do something.<sup>83</sup>

#### 16.) Ombud of New Brunswick

- The Office of the Ombud investigates complaints of an administrative nature against, among others, provincial government departments, school districts, municipalities, Crown agencies, and other agencies responsible to the Province, including a number of commissions and boards as defined under the *Ombud Act*.<sup>84</sup>
- The Ombud may make recommendations to the administrative head of the authority concerned, and may request that the authority notify the Ombud of the steps it proposes to take to give effect to the recommendations. If the authority does not act or refuses to act on the recommendation or acts in a manner unsatisfactory, the Ombud may send a copy of their report and recommendation to the Lieutenant-Governor in Council and may make a report to the Legislative Assembly.<sup>85</sup>

#### 17.) Patient Ombudsman (PO) – Ontario

- The PO is an independent, arm's length organization established by the provincial government to receive, respond to and help resolve complaints from patients, residents and caregivers about their experiences in Ontario's public hospitals, long-term care homes, and home and community care.<sup>86</sup>
- The PO may make recommendations to the health sector organization.<sup>87</sup>

<sup>80</sup> Ombudsman Toronto, "FAQ", Questions 3 ("How can Ombudsman Toronto help me?"), 4 ("Who can make a complaint?"), 14 ("Isn't Ombudsman Toronto part of the city government? Why does it say it is independent?"), online: *Ombudsman Toronto Website* <<https://www.ombudsmantoronto.ca/About-Us/FAQ>>.

<sup>81</sup> *Ibid* "How We Work", "The Power of Ombudsman Toronto's Voice", online: <<https://www.ombudsmantoronto.ca/Investigative-Work/How-We-Work>>.

<sup>82</sup> Ombudsman de Montréal, "History, role and mandate" and "Role and mandate", online: *Ombudsman de Montréal Website* <<https://ombudsmandemontreal.com/en/about-us/history-role-and-mandate>>.

<sup>83</sup> *Ibid* "Power to investigate and make recommendations", online: <<https://ombudsmandemontreal.com/en/our-services/power-to-investigate-and-make-recommendations>>.

<sup>84</sup> New Brunswick Office of the Ombud, "Statutory responsibilities under the Ombud Act", online: *NB Office of the Ombud Website* <<https://ombudnb.ca/site/role-of-the-ombud/statutory-responsibilities-under-the-ombud-act>>.

<sup>85</sup> *Ombud Act*, c O-5, 2017, c.1, s 2, ss 21(1), 21(2) & 21(3), online: <<https://ombudnb.ca/site/images/PDFs/OmbudAct.pdf>>.

While the ombudsman's recommendations may be escalated as described, we located no indication from publicly available information that their recommendations are binding.

<sup>86</sup> Patient Ombudsman, "Who We Are", online: *Patient Ombudsman Website* <<https://patientombudsman.ca/About-Us/Who-We-Are>>.

<sup>87</sup> *Excellent Care for All Act*, 2010, S.O. 2010, c. 14, ss. 13.1(2), 13.4(1) <<https://www.ontario.ca/laws/statute/10e14#BK21>>; and, "Frequently Asked Questions", "If there is no resolution to my complaint, what happens?"

<<https://patientombudsman.ca/Complaints/Resources/FAQs>>. We located no indication from publicly available information that the ombudsman's recommendations are binding.



## 18.) Manitoba Ombudsman

- The Manitoba Ombudsman was created by the *Ombudsman Act*; it is an independent office of the Legislative Assembly of Manitoba. The Ombudsman conducts independent, impartial, and non-partisan investigations into complaints about administration by government bodies, for instance about access to information and privacy matters, fairness of government actions or decisions, or serious alleged ‘wrongdoings’.<sup>88</sup>
- The Ombudsman may make recommendations as he thinks fit to the appropriate minister and department or agency of the government concerned, or to the appropriate head of council. Where the Ombudsman makes a recommendation, he may request the department, agency of the government or municipality to notify him of the steps that it has taken or proposes to take to give effect to his recommendations. If within a reasonable time no action is taken which seems to be adequate and appropriate, the Ombudsman may report the matter, including a copy of the report containing the recommendations to the Lieutenant Governor in Council, and to the head of council; and may mention the report in the Ombudsman’s next annual report to the Assembly.<sup>89</sup>

## 19.) Office of the University of Queen’s Ombudsperson (OUO) – Ontario

- The central role of the OUO is to help ensure procedural fairness in university decision-making. It also provides general advice to community members about their rights and responsibilities, provides guidance on the procedures to follow, and reviews the university’s policies, procedures and decision-making frameworks and identifies opportunities for systemic improvement.<sup>90</sup>
- The OUO does not act as a decision-maker and does not overturn any university decision.<sup>91</sup>

## 20.) Ombudsman de la Ville de Laval (Ombudsman of the City of Laval, Québec)

- The Ombudsman intervenes or investigates in certain cases, on its own initiative or at the request of citizens when there are reasonable grounds to believe citizens were or could reasonably have been aggrieved by the act or omission of the city or a para-municipal organization, or their officers or employees, or at the request of the city’s Executive Committee or the Council; or, may intervene or investigate matters relating to an act or omission by a person completing tasks on behalf of the city.<sup>92</sup>
- The Ombudsman may exercise their power of recommendation with the city, and the City Manager informs the Ombudsman of the decision made on the recommendation. The Ombudsman may present to the City Council a recommendation that the city refuses to apply. City Council must then make a decision on the position chosen by the city.<sup>93</sup>

<sup>88</sup> “About the Office” <<https://www.ombudsman.mb.ca/info/about-the-office.html>>.

<sup>89</sup> *The Ombudsman Act*, CCSM c O45, ss 36(1), 36(2), 37(1), and 37(2); also see s 37(4), online:

<<https://web2.gov.mb.ca/laws/statutes/ccsm/o045e.php>>. While the ombudsman’s recommendations may be escalated as described, we located no indication from publicly available information that their recommendations are binding.

<sup>90</sup> Queen University Office of the Ombudsperson, “Role of Ombudsperson”, online: *Queen’s University Website*

<<https://www.queensu.ca/ombuds/who-we-are/role-of-ombudsperson>>.

<sup>91</sup> *Ibid* “How We Can Help”, online: <<https://www.queensu.ca/ombuds/how-we-can-help>>.

<sup>92</sup> Ombudsman de Laval, “What does the Ombudsman do?”, online: *Ombudsman de Laval Website*

<<https://ombudsmanlaval.com/en/what-does-the-ombudsman-do/>>.

<sup>93</sup> *Ibid* “What does the Ombudsman do?”, “Treatment of a case” online: <<https://ombudsmanlaval.com/en/what-does-the-ombudsman-do/>>. While the ombudsman’s recommendations may be escalated as described, we located no indication from publicly available information that their recommendations are binding.

## 21.) Office of the Ombudsman of Algonquin College – Ontario

- The purpose of the office is to provide an independent, impartial, and confidential process through which students and applicants may pursue the resolution of any college-related concern, and to provide information to students on college policies and procedures, rights and responsibilities of students in college situations, and advice on where and to whom complaints and inquiries are to be appropriately directed.<sup>94</sup>
- The Ombudsman may suggest fair and equitable options.<sup>95</sup> The Ombudsman may offer recommendations for a fair resolution. The Ombudsman’s decision to intervene or not, and his or her recommendations, shall be final. Where appropriate, the Ombudsman forwards recommendations for changes to policies, procedures, or practices to the appropriate college administrators or to the Students’ Association officials. Where changes to the *Terms of Reference* policy (cited in footnote 96 of this document) are recommended, they are vetted by the Ombudsman Review Committee, and then sent to the Algonquin College Executive Team for final approval.<sup>96</sup>

## 22.) Camosun College Office of the Ombudsperson – British Columbia

- The Office is an impartial service that provides confidential and informal assistance for resolving any Camosun College-related concerns, complaints or conflicts.<sup>97</sup>
- The Ombudsperson may make recommendations regarding solutions or changes to policies and procedures when appropriate.<sup>98</sup> The Ombudsperson cannot make policy and managerial decisions, or discipline decisions. While the Ombudsperson may comment on or make recommendations for change in Camosun College policy, practice or procedures, the Ombudsperson cannot make or “overrule” college policy or replace established legislative, judicial or administrative rules or procedures.<sup>99</sup>

## 23.) Concordia University Ombuds Office – Québec

- The Ombuds Office assists in the informal resolution of concerns and complaints related to the application of university policies, rules and procedures, and is responsible for promoting fairness in the university.<sup>100</sup>

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<sup>94</sup> Algonquin College Office of the Ombudsman, “Office of the Ombudsman”, “About the Office of the Ombudsman” and “Mandate”, online: *Algonquin College Website* <<https://www.algonquincollege.com/ombuds/about-the-office-of-the-ombudsman/>>.

<sup>95</sup> *Ibid* “Office of the Ombudsman”, “How the Ombudsman Can Help”, online:

<<https://www.algonquincollege.com/ombuds/about-the-office-of-the-ombudsman/how-the-ombuds-can-help/>>.

<sup>96</sup> *Terms of Reference for the Office of the Ombudsman*, ss 3(3.3)(i), 3.5, 3.6, online (pdf):

<<https://www.algonquincollege.com/policies/files/2021/06/SA02.pdf>>; a “Response” to the Ombudsman’s recommendations in the annual report is provided by the relevant committee and association (see s 3.13). We located no indication from publicly available information that the ombudsman’s recommendations are binding.

<sup>97</sup> Camosun College, “Ombuds Services” and “What is the Ombudsperson?”, online: *Camosun College Website*

<<https://camosun.ca/services/ombudsperson/services/>>.

<sup>98</sup> *Ibid* “Ombuds Services”, “What can the Ombudsperson do for me?”, online:

<<https://camosun.ca/services/ombudsperson/services/>>.

<sup>99</sup> *Ibid* “Ombuds Services” and “What the Ombudsperson CANNOT do?” and “Can the Ombudsperson make binding decisions?”, online: <<https://camosun.ca/services/ombudsperson/services/>>.

<sup>100</sup> Concordia University Ombuds Office, “Ombuds Office”, online: *Concordia University Website* <<https://www.concordia.ca/offices/ombuds.html>>.

- The Ombudsperson may not impose remedies or sanctions, or enforce any policy, rule or procedure. However, they may make appropriate recommendations regarding resolving complaints or improving policies, rules or procedures.<sup>101</sup> The Ombuds Office cannot impose a decision.<sup>102</sup>

#### 24.) McGill University Ombudsman for Students (OFS) – Québec

- The OFS offers confidential, informal, independent, and impartial dispute resolution services to all members of the student community. The mandate of the Ombudsperson is to intervene and attempt to resolve issues informally before proceeding to more formal processes.<sup>103</sup>
- The OFS may make recommendations for change to the relevant university administrative officer or, regarding student complaints, offer recommendations for a fair resolution. The OFS may make recommendations regarding a complaint to the appropriate university official and to that person’s superiors.<sup>104</sup> Regarding student complaints, the university official receiving the recommendations shall respond, outlining the steps, if any, that will be taken to address the issue, or the reasons why the recommendations cannot be implemented.<sup>105</sup> The OFS may also make recommendations regarding systemic issues for which the receiving university official responds with steps, if any, to address the issue, or the reasons why the recommendations cannot be implemented.<sup>106</sup>

#### 25.) McMaster University Ombuds Office – Ontario

- The Ombuds Office provides an independent, impartial and confidential process through which members of the university may pursue the resolution of any student-related issue. The Office also makes recommendations for changes in university student-related policies and procedures and promotes discussion on student-related matters of institution-wide concerns.<sup>107</sup>
- The Ombuds Office may make case-specific recommendations or recommendations involving policy and procedures to those in authority. To the extent that case-specific recommendations are not acted upon, the Ombudsperson may seek relief from a higher authority or, as a final resort, bring the matter to the general attention of the university community.<sup>108</sup> The Ombudsperson shall not have a judicial function, that is, will not make binding decisions in any cases, although the Ombudsperson may, where appropriate make recommendations; and shall not make, change or set aside university policies and procedures although recommendations may be made for their improvement.<sup>109</sup>

#### 26.) Seneca College Ombudsperson – Ontario

- The ombudsperson receives and reviews complaints from students in an independent, objective, impartial and confidential manner.<sup>110</sup>

<sup>101</sup> *Concordia University Terms of Reference of the Ombuds Office*, Policy BD-2 2017, s 5, online: <<https://www.concordia.ca/content/dam/common/docs/policies/official-policies/BD-2.pdf>>.

<sup>102</sup> Concordia University Ombuds Office, *supra* note 100, “Ombuds Office”, “What the Ombuds Office cannot do”.

<sup>103</sup> McGill Ombudsperson, “Ombudsperson”, online: *McGill University Website* <<https://www.mcgill.ca/ombudsperson/>>.

<sup>104</sup> *McGill Ombudsperson for Students Terms of Reference*, 2009, ss 1.1(ii), 4.2.3(v), and 4.2.4, online (pdf): <<https://www.mcgill.ca/ombudsperson/files/ombudsperson/ombudsperson-students-english.pdf>>.

<sup>105</sup> *Ibid* s 4.2.5.

<sup>106</sup> *Ibid* ss 4.3.1 & 4.3.3.

<sup>107</sup> McMaster University Ombuds Office, “Mandate of the Ombuds”, online: *McMaster University Website* <<https://www.mcmaster.ca/ombuds/#mission>>.

<sup>108</sup> *McMaster Ombuds Office Terms of Reference ([2002])*, ss 6.4, 6.5, and 6.6, online (pdf):

<<https://www.mcmaster.ca/ombuds/TERMS%20OF%20REFERENCE%20-%20Final%20June%202002.pdf>>. (Date of *Terms of Reference* located only in URL provided.)

<sup>109</sup> *Ibid* ss 6.9(b) and 6.9(c).

<sup>110</sup> Seneca College Ombudsperson, “Seneca Ombudsperson”, “Role of an Ombudsperson”, online: *Seneca College Website* <<https://www.senecacollege.ca/student-services-and-support/seneca-ombudsperson.html>>.

- The Ombudsperson cannot order or direct change in policies or procedures, but makes recommendations with a view to achieving fairness in college operations. The Ombudsperson may offer recommendations for a fair resolution, may make recommendations regarding a complaint to appropriate officials and may request that she/he be informed on any actions taken on recommendations or the reasons for not complying with them. The Ombudsperson shall not exercise a judicial function, or make binding decisions in any case; or, make college policy or replace established procedures, although these may be investigated and recommendations may be made for their improvement.<sup>111</sup>

### 27.) Simon Fraser University Office of the Ombudsperson – British Columbia

- The Ombudsperson is an independent, impartial and confidential resource for students for information and guidance on students' rights and responsibilities, including complaints or concerns, and university regulations, policies and procedures. The Ombudsperson may make recommendations to the university for changes to policies and procedures and to promote discussion on institution-wide concerns that impact students.<sup>112</sup>
- The Ombudsperson may make recommendations. They cannot order or force any decision to be changed.<sup>113</sup> The Ombudsperson may bring recommendations for systemic improvements, including suggested changes to policies or procedures, to the attention of those in authority, and to advocate for action on these recommendations. They may forward recommendations regarding policy and procedure to the appropriate university officials.<sup>114</sup>

### 28.) Bureau de l'Ombudsman de l'Université Laval – Québec

- The Ombudsman's main role is to receive complaints from members of the university community. It may investigate when it has reason to believe that the person who filed a complaint has been wronged by administrative mechanisms or has been the subject of injustice or violation of his fundamental rights or dignity by a member acting on behalf of the university.
- The Ombudsman may recommend a correction or an alternative.<sup>115</sup> The Ombudsman may file recommendations with persons, management staff or bodies deemed appropriate. It may also suggest changes to university policies and regulations and comment on current practices at the university.<sup>116</sup>

### 29.) Bureau de l'Ombudsman de l'Université de Montréal (UdeM) – Québec

- The UdeM Ombudsman receives requests from members of the university community to ensure they are treated fairly and equitably. They can be contacted for information, advice or to report a situation that is considered unfair.

<sup>111</sup> *Terms of Reference for Seneca's Ombuds Office*, ss 8, 18, 21, 30(b) & (e), online (pdf):

<<https://www.senecacollege.ca/content/dam/projects/seneca/student-services/ombuds-office-terms-of-reference.pdf>>.

<sup>112</sup> Simon Fraser University Office of the Ombudsperson, "The Office of the Ombudsperson", online: *Simon Fraser University Website* <<https://www.sfu.ca/ombudsperson/about/ombudsperson.html>>.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Terms of Reference for the Office of the Ombudsperson*, "Mandate of the Office", s 3(c); and, "Responsibilities of the Ombudsperson" s. 1(c), online: *Simon Fraser University Website* <<https://www.sfu.ca/ombudsperson/about/tor.html>>.

<sup>115</sup> (translation) Bureau de l'Ombudsman de l'Université Laval, "Questions", "What is the role of the Ombudsman?", and "What are the powers of the ombudsman", online: *Université Laval Website* <<https://ombudsman.ulaval.ca/questions-frequentes/>>.

<sup>116</sup> *Ibid* "Calling on the Ombudsman", "What for?" <<https://ombudsman.ulaval.ca/faire-appel-a-lombudsman/>>. We located no indication from publicly available information that the ombudsman's recommendations are binding.

- The UdeM Ombudsman may make recommendations. They cannot act as a court or impose a point of view, or be involved in administrative and decision-making structures.<sup>117</sup>

### 30.) Western University Office of the Ombudsperson – Ontario

- The Office of the Ombudsperson provides a confidential environment in which students can discuss a university-related problem or concern. They may investigate or review a decision and may recommend a remedy.
- The recommendations of the Ombudsperson are not binding.<sup>118</sup>

### 31.) Protecteur universitaire de l'Université du Québec à Montréal – Québec

- The main function of the Ombudsperson is to receive complaints from members of the university community who feel aggrieved by the university's administrative mechanisms or feel they are victims of injustice.<sup>119</sup>
- The university Ombudsperson has the power to recommend solutions, but has no power to impose them.<sup>120</sup>

### 32.) Student Ombuds Office of the University of Calgary – Alberta

- The Ombuds Office ensures students have a safe, confidential, and impartial resource to discuss and help resolve any student related issue(s).
- The Ombuds Office may make recommendations for changes in university policies and procedures. The Ombuds will not make university policies or procedures; rather, the Ombuds will bring matters to the attention of the appropriate university authorities and recommend a review of the policy or procedure. Where appropriate, the Ombuds may recommend specific improvements. The Ombuds does not make decisions for anyone.<sup>121</sup>

### 33.) University of Dalhousie Ombudsperson – Nova Scotia

- The Ombudsperson Office is available to all Dalhousie students for free, confidential, impartial, and independent support to help resolve any university-related concerns.<sup>122</sup>
- The Ombudsperson can only make recommendations. They do not change decisions, policies, or regulations, or decide who is right or wrong.<sup>123</sup> The Ombudsperson is not a decision-maker and

<sup>117</sup> (translation) Bureau de l'ombudsman de l'Université de Montréal, "Our services", online: *Université de Montréal Website* <<https://ombudsman.umontreal.ca/besoin-daide/nos-services/>>.

<sup>118</sup> University of Western Ontario Office of the Ombudsperson, "Our Mission", online: *University of Western Ontario Website* <<https://www.uwo.ca/ombuds/our-mission.html>>.

<sup>119</sup> (translation) Protectrice universitaire de l'Université du Québec à Montréal (UQAM), "Mission", "The function of the academic protector", online: *UQAM Website* <<https://protectriceuniversitaire.uqam.ca/a-propos/mission/>>.

<sup>120</sup> (translation) *Règlement sur la protectrice, le protecteur universitaire, Règlement numéro 16*, 2020, s 2.4, online (pdf): <[https://instances.uqam.ca/wp-content/uploads/sites/47/2017/12/REGLEMENT\\_NO\\_16.pdf](https://instances.uqam.ca/wp-content/uploads/sites/47/2017/12/REGLEMENT_NO_16.pdf)>.

<sup>121</sup> *University of Calgary, Student Ombuds Office Terms of Reference*, ss. 2(a), 2(c)(ii) & 3(g), online (pdf): <<https://www.ucalgary.ca/live-uc-ucalgary-site/sites/default/files/teams/9/student-ombuds-office-terms-of-reference-november-2016.pdf>>; and, "Role of the Ombuds", online: <<https://www.ucalgary.ca/student-services/ombuds/role>>.

<sup>122</sup> University of Dalhousie Ombudsperson, "Student Rights & Responsibilities", "Ombudsperson", online: *University of Dalhousie Website* <[https://www.dal.ca/campus\\_life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson.html](https://www.dal.ca/campus_life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson.html)>.

<sup>123</sup> *Ibid* "Student Rights & Responsibilities", "Ombudsperson", "The Ombudsperson does not", online: <[https://www.dal.ca/campus\\_life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson.html](https://www.dal.ca/campus_life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson.html)>.

does not have the authority to overturn decisions or change policies but makes recommendations to the university based on trends.<sup>124</sup>

### 34.) Carleton University Ombuds Services – Ontario

- Carleton University’s Ombuds Services is an independent office whose primary role is to ensure fairness for undergraduate and graduate students at Carleton University.
- The Ombuds Services may issue recommendations. It does not have the authority to overturn or force decisions.<sup>125</sup>

### 35.) Lakehead University Ombudsperson – Ontario

- The Office of the Ombudsperson is an impartial service which provides confidential and informal assistance for resolving any Lakehead University-related concerns, complaints or conflicts.
- The Ombudsperson may make recommendations regarding solutions or changes to policies and procedures.<sup>126</sup> The Ombudsperson cannot make policy and managerial decisions or discipline decisions. While the Ombudsperson may comment on or make recommendations for change in Lakehead University policy, practice or procedures, the Ombudsperson cannot make or “overrule” university policy or replace established legislative, judicial or administrative rules or procedures.<sup>127</sup>

### 36.) Toronto Metropolitan University Office of the Ombudsperson – Ontario

- The Office of the Ombudsperson is primarily concerned with ensuring that everyone involved in a dispute is treated fairly and that decisions affecting students are made promptly and fairly.<sup>128</sup>
- The Office of the Ombudsperson brings findings and recommendations to the attention of those in authority. It is not the function of the Ombudsperson to devise new rules and procedures, but to make recommendations and follow these up to the extent necessary for their formulation and/or improvements. The Ombudsperson shall forward recommendations regarding policy and procedure to the appropriate officials.<sup>129</sup>

### 37.) York University Ombudsperson – Ontario

- The role of the York University Ombudsperson is to provide an impartial and confidential service to assist current members of York University (students, faculty and staff) and in some instances non-community members.<sup>130</sup>

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<sup>124</sup> *Ibid* “Student Rights & Responsibilities”, “Ombudsperson FAQ”, “Can the Ombudsperson solve my complaint or problem?” <[https://www.dal.ca/campus\\_life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson/ombudsperson-faq.html](https://www.dal.ca/campus_life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson/ombudsperson-faq.html)>.

<sup>125</sup> Carleton University Ombuds Services, “Welcome to Ombuds Services”, online: *Carleton University Website* <<https://carleton.ca/ombuds/>>.

<sup>126</sup> Lakehead University Ombudsperson, “Office of the Ombudsperson”, “General FAQ”, “What is the Ombudsperson?”, and “What can the Ombudsperson do for me?” – “Mediate and Explore”, online: *Lakehead University Website* <<https://www.lakeheadu.ca/faculty-and-staff/departments/services/ombuds-office/advice/general-faq>>.

<sup>127</sup> *Ibid* “Office of the Ombudsperson”, “General FAQ”, “What can the ombudsperson *not* do?”, and “Can the Ombudsperson make binding decisions?”.

<sup>128</sup> Toronto Metropolitan University Office of the Ombudsperson, “Services”, online: *Toronto Metropolitan University Office Website* <<https://www.torontomu.ca/ombudsperson/services/>>.

<sup>129</sup> *Terms of Reference for the Office of The Ombudsperson at Toronto Metropolitan University*, 2009, ss 1(c), 2(c), and “Responsibilities of the Ombudsperson” – (c), online (pdf): <<https://www.torontomu.ca/content/dam/ombudsperson/documents/TermsOfReferenceOmbudspersonsOfficeTMU.pdf>>. We located no indication from publicly available information that the ombudsman’s recommendations are binding.

<sup>130</sup> York University Ombudsperson, “Ombudsperson”, online: *York University Website* <<https://www.yorku.ca/unit/ombuds/>>



- The Ombudsperson may make recommendations about specific actions or decisions or may recommend changes to policies or procedures. However, the Ombudsperson does not have the authority to over-rule decisions or impose solutions.<sup>131</sup>

### 38.) Bishop University Ombuds Office – Québec

- The major role of the Ombudsperson is to receive complaints from members of the university community who believe that they have suffered some form of injustice, particularly of an academic nature.<sup>132</sup>
- The Ombudsperson may recommend changes and improvements in university policies, rules and procedures. They cannot order or force any decision to be changed.<sup>133</sup> They may recommend solutions in specific cases, like complaints. The Ombudsperson shall bring recommendations to the attention of those in authority according to the jurisdiction involved.<sup>134</sup>

### 39.) Ombudsman de la Société des Alcool du Québec (SAQ) – Québec

- The Ombudsman was created to achieve proper balance between SAQ’s commercial mandate and the fair treatment of all its business partners and for ensuring a healthy work environment to its employees. The role of the Ombudsman is to field complaints from employees and business partners.<sup>135</sup>
- The Ombudsman may make recommendations. Upon request, management shall inform the Ombudsman of the measures taken to remedy a situation and of any follow-up on his recommendations. When making recommendations, the Ombudsman has the responsibility to suggest actions or policies that will be equitable to all parties.<sup>136</sup>

### 40.) Canada Post Ombudsman

- The Ombudsman investigates complaints that have not been resolved by Canada Post to customers’ satisfaction.
- The Ombudsman may make recommendations to Canada Post formulated as case-specific interventions or to address policy and procedural changes that have a broader application. The Ombudsman has no legislative power over Canada Post and does not set corporate policy on matters related to postal services.<sup>137</sup>

<sup>131</sup> *Ibid* “What We Do”, online: <<https://www.yorku.ca/unit/ombuds/what-we-do/>>.

<sup>132</sup> *Terms of Reference*, 2001, “Mandate”, online: <<https://www.ubishops.ca/student-services/university-ombuds-office/terms-of-reference/>>.

<sup>133</sup> “University Ombuds Office”, online: <<https://www.ubishops.ca/student-services/university-ombuds-office/>>.

<sup>134</sup> *Terms of Reference*, *supra* note 132 “Mandate”, “Functions” – (b) and (d), “General Operation” – (iv), online: *Bishop University Website* <<https://www.ubishops.ca/student-services/university-ombuds-office/terms-of-reference/>>.

<sup>135</sup> Société des Alcool du Québec (SAQ), “Ombudsman”, online: *SAQ Website* <<https://www.saq.com/en/ombudsman>>.

<sup>136</sup> *Ibid* “Ombudsman”, *Rules regarding the role of Ombudsman, Procedure*, ss 18, 19 <<https://www.saq.com/en/ombudsman>>; and, *OMBUDSMAN Business Relations and Employees*, ss. 18, 19, online:

<[https://saqblobmktg.blob.core.windows.net/documents/Ombudsman\\_2019\\_AN.pdf](https://saqblobmktg.blob.core.windows.net/documents/Ombudsman_2019_AN.pdf)> ; and, see reference to *International Ombudsman Association (IOA) Code of Ethics*, last para. included in this PDF document.

<sup>137</sup> *Canada Post Ombudsman Mandate* ([2018]), “Mandate”, “What the Ombudsman Can Do For You”, “What the Ombudsman Does Not Do”, online (pdf): <[https://www.canadapost-postescanada.ca/ombudsman/wp-c/u/Mandate\\_E.pdf](https://www.canadapost-postescanada.ca/ombudsman/wp-c/u/Mandate_E.pdf)>. (Date in footer only.)

## b. INTERNATIONAL

### 1.) Commonwealth Ombudsman – Australia

- The Commonwealth Ombudsman provides assurance that the Australian Government entities and prescribed private sector organizations the Commonwealth Ombudsman oversees act with integrity and treat people fairly, and influences enduring systemic improvement in public administration in Australia and the region. The Commonwealth Ombudsman independently and impartially reviews complaints and disclosures about government administrative action, and influences government agencies to be accountable, lawful, fair, transparent and responsive, among other tasks.<sup>138</sup>
- The Commonwealth Ombudsman does not make a “fresh decision”, rather they consider the way a decision was made and make recommendations on how the decision or process could be improved.<sup>139</sup> After making recommendations, the Commonwealth Ombudsman follows up on entities’ implementation of the accepted recommendations. The Commonwealth Ombudsman may request particulars of any action a department or prescribed authority proposes to take with respect to the matters and recommendations included in the Commonwealth Ombudsman’s report.<sup>140</sup>
- Where action that is, in the Commonwealth Ombudsman’s opinion, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in a report to a department or to a prescribed authority within a reasonable time after the Commonwealth Ombudsman furnished the report to the department/authority, the Commonwealth Ombudsman may inform the Prime Minister accordingly in writing.<sup>141</sup>
- Where the Commonwealth Ombudsman is investigating the taking of action by a department or prescribed authority under a power, the Commonwealth Ombudsman may recommend that the principal officer of the department/authority refer a specified question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal (AAT) for an advisory opinion. The principal officer must refer the question to the AAT.<sup>142</sup>

### 2.) Parliamentary and Health Service Ombudsman (PHSO) – United Kingdom

- The PHSO makes final decisions on complaints that have not been resolved by the NHS in England and UK government departments and other UK public organizations. The PHSO looks into complaints of alleged injustice or hardship because an organization has not acted properly or has provided poor service and not put things right.<sup>143</sup>
- The PHSO may make recommendations (e.g., they can ask organizations to take an action), but cannot make an organization cancel or change a decision it is entitled to make as part of its responsibilities, or make an organization replace its decision with the PHSO’s decision. The PHSO also cannot make an organization change its policies or procedures, guidance or standards, or

<sup>138</sup> Commonwealth Ombudsman, “About us”, online: *Commonwealth Ombudsman Website* <<https://www.ombudsman.gov.au/about>>.

<sup>139</sup> *Ibid* “Our role” online: <<https://www.ombudsman.gov.au/about/our-role>>.

<sup>140</sup> *Factsheet Ombudsman recommendations* 2020, at 1, online (pdf): <[https://www.ombudsman.gov.au/data/assets/pdf\\_file/0016/111670/Crafting-Recommendations-Fact-Sheet.pdf](https://www.ombudsman.gov.au/data/assets/pdf_file/0016/111670/Crafting-Recommendations-Fact-Sheet.pdf)>; and, *Ombudsman Act 1976*, (Austl) 1976/181, ss 15(3)(b) and 15(4), online: <<https://www.legislation.gov.au/Details/C2021C00508>>.

<sup>141</sup> *Ibid* s 16(1); also see ss 16(2), 16(3), 17, 18.

<sup>142</sup> *Ibid* s 11. While the ombudsman’s recommendations may be escalated as described, we located no indication from publicly available information that their recommendations are binding, other than the requirement to refer questions to AAT for an advisory opinion in specified circumstances.

<sup>143</sup> Parliamentary and Health Service Ombudsman, “What we do”, online: *Parliamentary and Health Service Ombudsman Website*, online: <<https://www.ombudsman.org.uk/about-us/what-we-do>>



replace these with PHSO's.<sup>144</sup> If the PHSO makes recommendations, they will follow up on them until they are acted on. The PHSO may escalate within the organization in question recommendations that have not been completed. The PHSO does not have legal powers to enforce their recommendations, but where an organization is reluctant to implement them, the PHSO tries their best to persuade it to do so. As a last resort, the PHSO can make a special report to Parliament about an organization's failure to carry out the PHSO's recommendations. In health cases, they may make regulators aware of such a failure.<sup>145</sup>

### 3.) Ombudsman of New Zealand

- The Ombudsman helps New Zealanders deal with public sector agencies. They handle complaints, undertake investigations and inspections, and encourage good administration.<sup>146</sup>
- The Ombudsman may make recommendations, and may request the department or organization to notify him of the steps (if any) that it proposes to take to give effect to the Ombudsman's recommendations.<sup>147</sup> An Ombudsman may recommend that remedial action be taken if a complaint is found to be justified. The Ombudsman's recommendation is not binding, but the Ombudsman can report to the Prime Minister and subsequently to Parliament if dissatisfied with the action taken.<sup>148</sup>

### 4.) Food and Drug Administration (FDA) Office of the Ombudsman – United States

- The FDA Office of the Ombudsman is the FDA's focal point for addressing complaints and assisting in resolving disputes between companies or individuals and FDA offices concerning fair and even-handed application of FDA policy and procedures.<sup>149</sup> The ombudsman programs throughout the FDA work to resolve problems and issues occurring within their own respective organizations. If that effort is unsuccessful or if intercenter issues are involved, the matter will go to the FDA Ombudsman's Office.<sup>150</sup>
- For example, the Center for Drug Evaluation and Research (CDER) Ombudsman will not overturn a decision/action, as the ombuds is not a deciding official, and will not force anyone to turn over or modify a decision/action. The CDER Ombudsman references the limitations of a federal ombudsman's authority set out by the American Bar Association: *An ombuds should not, nor should an entity expect or authorize an ombuds to: make binding decisions or determine rights; or, directly compel an entity or any person to implement the ombuds's recommendations.*<sup>151</sup>

<sup>144</sup> *Ibid* "What we can and can't help with", "What you can expect", online: <<https://www.ombudsman.org.uk/making-complaint/what-we-can-and-cant-help>>.

<sup>145</sup> *Ibid* "Putting this right", "Following up", online: <<https://www.ombudsman.org.uk/organisations-we-investigate/putting-things-right>>.

<sup>146</sup> Ombudsman of New Zealand, "About the Ombudsman", online: *Ombudsman of New-Zealand Website* <<https://www.ombudsman.parliament.nz/about-ombudsman>>.

<sup>147</sup> *Ombudsmen Act 1975*, 1975/9, ss 22(3), online:

<[https://www.legislation.govt.nz/act/public/1975/0009/latest/whole.html?search=sw\\_096be8ed81ca4575\\_8.80\\_25\\_se&p=1](https://www.legislation.govt.nz/act/public/1975/0009/latest/whole.html?search=sw_096be8ed81ca4575_8.80_25_se&p=1)>.

<sup>148</sup> New Zealand Government – Cabinet Office – Department of the Prime Minister and Cabinet, "Cabinet Manual 2017", "Ombudsmen Act 1975", s 8.80, online (pdf): <<https://dpmc.govt.nz/sites/default/files/2017-06/cabinet-manual-2017.pdf>>; link found here (pdf): <<https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual>>. The *Cabinet Manual* is the primary authority on the conduct of Cabinet government in New Zealand. It documents Cabinet's procedure and provides authoritative guidance for Ministers, their offices, and those working within government. (*Cabinet Manual*, Foreword, p. xv). Also see *Ibid* 22(4).

<sup>149</sup> U.S. Food & Drug Administration Office of the Ombudsman, "Office of the Ombudsman", online: *FDA Website* <<https://www.fda.gov/about-fda/office-chief-scientist/office-ombudsman>>

<sup>150</sup> *Ibid* "Contact an Ombudsman at FDA", online: <<https://www.fda.gov/about-fda/office-chief-scientist/contact-ombudsman-fda>>.

<sup>151</sup> *Ibid* "FAQs and Common Complaints", Section A, Question 7, online: <<https://www.fda.gov/about-fda/cder-ombudsman/faqs-and-common-complaints>>; and, American Bar Association, "Standards for the Establishment and Operation of

## 5.) Office of the Ombudsman of the State of Hawaii

- The Office of the Ombudsman is an independent agency of the Hawaii State Legislature that investigates complaints about actions of executive branch agencies of the state and county governments in Hawaii. The office has the power to recommend corrective action.
- The Ombudsman does not have the power to compel or reverse administrative actions but instead tries to resolve substantiated complaints through recommendations and reasoned persuasion. In addition to the resolution of individual complaints, the Ombudsman may make recommendations for changes to the law, administrative rules, or operating procedures.<sup>152</sup> The Ombudsman may request the agency to notify the ombudsman of any action taken on the ombudsman's recommendations.<sup>153</sup>

## 6.) Office of the Ombudsman of the State of Alaska

- The Alaska State Ombudsman investigates citizen complaints about administrative acts of state agencies and determines appropriate remedies. They are a neutral, objective organization.
- The Ombudsman has no direct enforcement power. The Ombudsman can work to persuade an agency, or the governor or Legislature, to adopt the recommendations.<sup>154</sup>

## 7.) Provedor de Justiça (Ombudsman) – Portugal

- The Ombudsman is an independent State body that defends people whose fundamental rights were disrespected or who feel harmed by unfair or unlawful acts of the administration or other public authorities.
- The Ombudsman does not have binding powers of decision. It may direct to the competent bodies the suggestions or recommendations that it deems necessary to prevent and repair injustices. It may also request the review of the constitutionality or legality of legal norms before the Constitutional Court.<sup>155</sup>

## 8.) Riksdagens Ombudsman (Parliamentary Ombudsmen) (JO) – Sweden

- The JO are appointed by the Swedish parliament to ensure that public authorities and their staff comply with the laws and other statutes governing their actions.<sup>156</sup>
- The result of an investigation by a JO is documented in a decision or protocol. The ombudsmen's decisions are not legally binding, which means that the public authority does not officially have to comply with the ombudsmen's criticism.<sup>157</sup>

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Ombuds Offices", in ABA Resolutions, *Revised February 2004*, Section D: "Limitations on The Ombuds's Authority", at 4, online (pdf): <<https://abaombudsday.files.wordpress.com/2018/09/2004-aba-resolution.pdf>>.

<sup>152</sup> State of Hawaii Office of the Ombudsman, "About Us", online: *Hawaii Government Website* <<https://www.ombudsman.hawaii.gov/about-us/>>.

<sup>153</sup> Hawaii Revised Statutes, Chapter 96, *The Ombudsman*, §96-12, online: <<https://www.ombudsman.hawaii.gov/about-us/chapter-96/#96-12>>.

<sup>154</sup> Alaska State Ombudsman, "Frequently Asked Questions", "What does the Alaska State Ombudsman do?" and "Can the Ombudsman force a state agency to do something?", online: *Alaska Government Website* <<https://ombud.alaska.gov/faqs/#faq14>>.

<sup>155</sup> Provedor de Justiça, "Who we are" and "How do we act?", online: *Provedor de Justiça Website* <<https://www.provedor-jus.pt/quem-somos/perguntas-frequentes/#1604423311465-beadf11f-37a9>>.

<sup>156</sup> Riskdagens Ombudsman (Translated as "Parliamentary Ombudsmen"), "About JO", online: *JO Website* <<https://www.jo.se/en/About-JO/>>.

<sup>157</sup> *Ibid* "Decisions", online: <<https://www.jo.se/en/Decisions/>>.

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## 9.) Danish Parliamentary Ombudsman – Denmark

- The Ombudsman is elected by the Danish Parliament to protect the rights of citizens by contributing to ensuring that the administration acts lawfully and applies good administrative practice.<sup>158</sup>
- If the Ombudsman finds that the authority has committed errors, he can express criticism and may recommend that the authority reprocess the case and make a new decision. The Ombudsman cannot demand that the authorities follow a recommendation.<sup>159</sup>

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<sup>158</sup> (translated) Folketingets Ombudsmand (Translated as: “Parliamentary Ombudsman”), “Welcome to the Ombudsman” online: *Parliamentary Ombudsman Website* <<https://www.ombudsmanden.dk/#cp-title>>.

<sup>159</sup> *Ibid* “To initiate an actual Ombudsman investigation”, “Criticism and recommendations”, online: <[https://en.ombudsmanden.dk/complaining/what happens when the ombudsman receives a complaint/to initiate an actual ombudsman investigation/](https://en.ombudsmanden.dk/complaining/what-happens-when-the-ombudsman-receives-a-complaint-to-initiate-an-actual-ombudsman-investigation/)>.

**SCHEDULE “B”**

**CSA Consultation Questions and IIAC Responses**

*(See attached.)*

### CSA Consultation Questions and IIAC Responses

1. The CSA contemplates that under the proposed framework, an IDRS would be authorized to issue binding decisions in circumstances where it is designated or recognized in a jurisdiction as the identified Ombud service. It is possible that some CSA jurisdictions may not designate or recognize OBSI as the identified Ombud service at the same time, resulting in the status quo (e.g., OBSI making non-binding recommendations only) applying in those jurisdictions until OBSI were designated or recognized as the identified Ombud service. If jurisdictions designate or recognize OBSI as the identified Ombud service at different times, what operational impacts, if any, would you anticipate from an IDRS being designated or recognized in some but not all jurisdictions? How can these impacts best be managed?

**As stated, should a binding form of dispute resolution be adopted through NI 31-103, it must achieve uniformity across provinces and territories before any effective date. A lack of harmonization means inconsistency and unfairness for investors and operational complexity for registrants.**

**These impacts are best managed by maintaining the status quo subject to the needed enhancement to the OBSI process as outlined in this correspondence.**

2. The proposed rule amendments include a new provision requiring compliance with a final decision of the identified Ombud service. Under the proposed framework, we contemplate that both a recommendation or decision of the identified Ombud service could become a final decision that will be binding on the firm under certain circumstances. Specifically:
  - a. With respect to a recommendation made by the identified Ombud service following the investigation and the recommendation stage, we contemplate the recommendation becoming a final decision where (i) a specified period of time has passed since the date of the recommendation, (ii) neither the firm nor the complainant has objected to the recommendation, and (iii) the complainant has not otherwise withdrawn from the process in a manner authorized by the identified Ombud service (the **deeming provision**).

What are your general thoughts about the deeming provisions and the circumstances that trigger it?

**The deeming provision is unnecessary.**

Please also comment on whether 30, 60, 90 days would be an appropriate length of time to be specified for a recommendation to be deemed a final decision under the deeming provision.

**Please see above.**

b. With respect to the decision made by the identified Ombud service following the review and decision stage, we contemplate the decision becoming final where (i) a specified period of time has passed since the date of the decision (the **post-decision period**), and if the complainant did not trigger the review and decision stage, (ii) the complainant has not rejected the decision and has not otherwise withdrawn from the process in a manner authorized by the identified Ombud service.

Please comment on the provision of this post-decision period and whether 30, 60 or 90 days would be the appropriate length for the post-decision period.

**Please see enclosed submission outlining fairness concerns regarding proposed decision stage.**

3. The proposed framework contemplates that complainants could not reject a decision of the identified Ombud service if they initiated the second-stage review of the recommendation by objecting to it. What are your views on this approach?

**Should a fair and reasonable binding process be available as recommended in this correspondence, it should be binding on all parties.**

4. Please provide any comments on maintaining the compensation limit amount of \$350,000.

**The compensation limit is too high for the Proposal, which raises significant concern. Should the Proposal proceed without recommended changes, binding authority should be limited to recommendations of \$10,000 or less. We note that in 2022, the OBSI's average recommended compensation was \$8,985.<sup>1</sup>**

5. The proposed framework does not contemplate an appeal of a final decision to either a securities tribunal, or a statutory right of appeal to the courts (although parties could still seek judicial review of a final decision). What impact, if any, do you think the absence of an appeal mechanism will have on the fairness and effectiveness of the framework for parties to a dispute?

**Please see enclosed submission outlining fairness concerns regarding absence of appeal and proposed solutions**

6. Should the proposed framework include a statutory right of appeal to the courts or another alternative independent third-party procedure for disputes involving amounts above a certain monetary threshold (for example, above \$100,000)? If so, please explain why.

**Yes. Please see enclosed submission.**

7. Are there elements of oversight, whether mentioned in this Notice or not, that you consider to be of particular importance in ensuring the objectives of the proposed framework are met? If so, please explain your rationale.

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<sup>1</sup> The Proposal, Annex E at para. 5(a), p. 30.

**As per enclosed submission, CSA oversight proposed means less independence and neutrality.**

8. Do you consider oversight, together with the other aspects of the proposed framework discussed in this Notice, to be sufficient to ensure that the identified Ombud service remains accountable?

**No. Please see enclosed submission.**

9. Please provide your views on the anticipated effectiveness of prohibiting the use of certain terminology for internal or affiliated complaint-handling services that implies independence, such as “ombudsman” or “Ombud service”, to mitigate investor confusion.

**The prohibition is unnecessary.**