



OSGOODE HALL LAW SCHOOL  
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## INVESTOR PROTECTION CLINIC

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September 9, 2025

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Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission of New Brunswick  
Superintendent of Securities, Department of Justice and Public  
Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
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### **Re: CSA Notice and Request for Comment 25-314 - Proposed approach to oversight and refinements to the proposed binding authority framework for an identified ombudservice**

The Osgoode Investor Protection Clinic (“Osgoode IPC” or “Clinic”) appreciates the opportunity to comment on the Canadian Securities Administrators’ (“CSA”) proposed approach to oversight of an independent dispute resolution service that can make binding decisions (the identified ombudservice), and proposed refinements to the regulatory framework for the Ombudsman for Banking Services and Investments (“OBSI”) complaint resolution processes.

By way of background, the Osgoode IPC, the first clinic of its kind in Canada, is dedicated to providing free legal advice and services to retail investors across the country. Since launching in 2016, we have worked with a wide range of clients who have suffered investment losses through no fault of their own. From seniors whose advisers mismanaged their entire life savings on the cusp of their retirement, to low-income investors whose advisers recommended leveraged loans, we work with vulnerable retail investors who need assistance in seeking redress but cannot afford a lawyer.

We are pleased to bring their voices to the CSA proposal.

We appreciate your consideration of our comments; in the spirit of brevity, we have focused on those questions and topics on which we think we can best add value to the process.

Sincerely,

**The Osgoode Investor Protection Clinic**

Poonam Puri, Co-Founder & Academic Director

Brigitte Catellier, Associate Director

Monica Costache, Student Caseworker

Rachel Futerman, Student Caseworker

## General Comments

The Osgoode IPC strongly supports the implementation of an independent dispute resolution service that can make binding decisions through OBSI. Binding decision-making authority is a critical step in strengthening the investor protection framework by providing fair compensation for harmed investors. The IPC supports swift implementation of this initiative.

Based on our analysis of data collected through our years of operation from 2017-2025, we have assisted retail investors through the OBSI complaint process in 21 files. In 85.7 percent of these files, our clients resided in Ontario and in the remainder of the files, our clients resided in Alberta, British Columbia, and New Brunswick.

As one example, in 2024, one of the Osgoode IPC's clients received an offer that was less than half of OBSI's recommended amount. This "low-ball" offer was demoralizing for the client and could have been avoided if investment firms were bound by OBSI's compensation recommendations. Indeed, this case is illustrative: OBSI has reported 33 cases since 2019 in which investors received lower settlement amounts than those recommended.<sup>1</sup> Binding authority would prevent this injustice.

Providing OBSI with binding authority would place the organization in a similar position to comparable regulatory organizations, such as the UK Financial Ombudsman Service and the Australian Financial Complaints Authority, both of which have already adopted binding authority in their decision-making processes.<sup>2</sup>

### **Question 1: Is \$75,000 an appropriate threshold amount to require OBSI to appoint an external decision maker or a panel of external decision makers at stage 2?**

The Osgoode IPC considers the \$75,000 threshold too high, as it may prevent many retail investors from accessing a review by an external decision maker at stage 2. Since the Clinic's inception, only one-third of Osgoode IPC clients who filed OBSI complaints had a disputed amount greater than \$75,000, and none have received an OBSI recommendation at or above this level. Under the proposed refinements, these retail investors would only be able to access an external decision maker's review of a stage 1 recommendation on a discretionary basis.

The \$75,000 threshold is based on OBSI's historical investment case recommendations and is intended to represent a recommendation amount that "is sufficiently high and therefore of more significant impact to the parties." However, in the Osgoode IPC's experience, amounts well below \$75,000 could have a material impact on a retail investor's financial situation or in some cases represent their entire savings. The relative significance of the amount to the retail investor should be considered in determining whether an external decision maker should participate in a stage 2 review.

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<sup>1</sup> Ombudsman for Banking Services and Investments, *Annual Report 2024* (2024) at 47-49, online: [here](#).

<sup>2</sup> Financial Ombudsman Service, *Financial Conduct Authority (FCA) handbook*, DISP 3.3.6, online: [here](#); Australian Financial Complaints Authority, *Complaint Resolution Scheme Rules* (1 July 2024) at s.A.15, online: [here](#).

In addition to the above, under the proposed refinements, a stage 2 review would become binding on both parties once issued, if initiated by the complainant. We recommend amending the framework so that complainants who initiate a stage 2 review are not bound by OBSI's stage 2 decision where the amount of their claim is below the maximum amount permitted for adjudication in Small Claims Court (the maximum will be \$50,000 in Ontario as of October 1, 2025).

Small Claims Court provides a low-cost pathway for redress that does not require legal representation and approximately 20% of the Osgoode IPC's current cases are actions in Small Claims Court. We believe that complainants should retain the option to pursue their case in Small Claims Court even after initiating a stage 2 review. This approach is both fair and consistent with investor protection goals, as it expands the avenues available to retail investors for obtaining an independent external review of their case, including through the judicial process.

**Question 2: Does setting a monetary threshold for the requirement to appoint an external decision maker at stage 2 impact the accessibility of the proposed framework for investors?**

The Osgoode IPC believes that setting a monetary threshold for the requirement to appoint an external decision maker at stage 2 would impact the accessibility of the proposed framework for investors. We note that in disputes between retail investors and financial institutions, there are significant asymmetries in resources, investment knowledge, and access to legal representation. We urge the CSA to consider appointing an external decision maker for *all* cases requiring a stage 2 review, in order to “even the playing field” by giving retail investors the opportunity to have their case evaluated by independent, impartial experts.

However, the Osgoode IPC would like to highlight concerns about the process for appointing an external decision maker at stage 2. Care must be taken to ensure that appointing an external decision maker does not result in undue delays in delivering a final decision for investors. Timely decision-making is essential to maintaining retail investors' confidence in the fairness of the process and outcome in their case, and by extension their confidence in the capital markets. Given the complexity of certain cases involving multiple transactions and account activity over many years, it is foreseeable that a thorough external review of a complainant's file will take time. The Osgoode IPC recommends that the steps of the stage 2 external review, including timelines, be published to ensure the process is transparent and proceeds without delay. Additionally, we recommend that the OBSI binding decision-making process should preserve a “tolling period” that pauses the limitations period for claims that are lower than the maximum amount of a claim permitted in Small Claims Court, to truly advance access to justice and better provide retail investors the opportunity to consider legal action where appropriate.<sup>3</sup>

**Question 3: What would be potential advantages and disadvantages of permitting OBSI to appoint senior OBSI staff not involved in the stage 1 process to a panel conducting the stage 2 process in cases that meet or exceed the proposed monetary threshold, if the majority of the panel is comprised of external decision makers?**

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<sup>3</sup> Ombudsman for Banking Services and Investments, *Terms of Reference*, (16 June 2022), “Part 7 - Agreement to Suspend Statutory Limitations Period”, online: [here](#).

The Osgoode IPC supports the appointment of independent, external decision makers exclusively in *all* matters that proceed to a stage 2 review. While appointing senior OBSI staff not involved in the stage 1 process to a panel comprised mostly of external decision makers to conduct the stage 2 review may improve efficiency, we believe the disadvantage of actual or perceived bias outweighs this benefit. We are concerned that if a senior OBSI staff member draws on information provided by the initial OBSI stage 1 reviewer, it could undermine the independence of the stage 2 process.

For a decision to be changed, the current reconsideration process relies on an OBSI staff member's assessment of whether an error was made by the previous investigator or whether there is new information that was previously unavailable.<sup>4</sup> This can create the perception that the reconsideration is not a full and impartial reassessment of the case, which can reduce investor confidence in the OBSI process.

If the stage 2 panel consists of independent, external reviewers, the binding decision process will better align with OBSI's objective of providing fair and impartial dispute resolution services for all cases. To prevent actual or perceived bias, the Clinic would recommend that external reviewers be subject to strict independence and confidentiality requirements, with OBSI clearly disclosing how it ensures these requirements are met. Additionally, the Osgoode IPC would encourage external decision makers to provide their stage 2 reasoning in plain language when communicating the result, to enhance transparency for the complainant.

The Osgoode IPC would also advocate for transparency in the process of selecting candidates for the external decision-making panel roster. Ensuring the panel is composed of individuals with diverse industry backgrounds, education, and experience is crucial to objectively incorporating a range of perspectives. This would help safeguard each stage of the OBSI review process and support the goal of delivering independent and impartial decisions.

#### **Question 5: What would the impact be of maintaining OBSI's current six-year limitation period?**

Maintaining the current six-year limitation period may in some instances prevent retail investors, who often have limited resources and financial literacy compared to large financial institutions, from seeking recourse. The Osgoode IPC encourages the CSA to consider a different approach to the current six-year limitation period.

As mentioned above, since the Osgoode IPC's inception, 64% of our clients self-identify as having low or no investment knowledge.<sup>5</sup> Investment losses, particularly in long-term financial products and savings plans, are often difficult to identify within six years, especially for individuals who lack the investment knowledge and sophistication to recognize when they have suffered a loss. Retail investors typically do not meet with their advisers regularly and information asymmetries can make it difficult for them to determine whether investment performance issues are the result of mismanagement by their adviser or market forces. Additionally, once a complainant has

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<sup>4</sup> Ombudsman for Banking Services and Investments, *Reconsiderations and Complaints About OBSI* (2025), online: [here](#).

<sup>5</sup> *Supra* note 5.

recognized they have been wronged, it often takes time for them to understand and navigate their options for redress, including through OBSI. Therefore, the limitation period should only be considered if the firm raises timeliness as an issue, and, when the complaint is brought beyond 6 years, the firm should bear the burden of proving that it was brought beyond a “reasonable” time.

In one Clinic case, a client was advised to obtain a long-term loan to be financed by the investment returns of a managed mutual fund portfolio, despite being unsuitable for them. Over time, the mutual fund portfolio failed to generate the promised returns, and the client was unable to make their loan payments. The Clinic assisted the client with filing an OBSI complaint against the financial services firm and advisor, but the case was barred from investigation because OBSI found that the six-year limitation period had expired. OBSI determined that the limitation period began several years earlier based on the firm’s claim that loan agreement documents had been mailed to the client, despite no evidence confirming receipt. Although the client stated they had never received these documents and therefore had no knowledge of the portfolio’s inadequacy, the strict interpretation of a six-year limitation period left them with no recourse.

In another Clinic case, a married couple nearing retirement was informed that their financial savings plan would be insufficient to cover their living expenses throughout their planned retirement years. Neither understood the construction of the investment portfolio and were unaware that their investments were performing poorly. Over the course of their seven-year advisory relationship, their financial advisor had repeatedly assured them that their funds were being well-managed. The long-term nature of retirement investments, combined with market volatility, makes it difficult for similarly situated investors to identify financial harm. Extending the OBSI limitation period based on a “reasonable” timeframe would therefore greatly benefit vulnerable investors, especially those with long-term investment horizons.

Other international financial regulatory bodies are also considering reforms to ensure fairness in the consumer dispute resolution process. For example, the UK Financial Conduct Authority and the UK Financial Ombudsman Service are proposing an increase to the six-year limitation period through the introduction of an absolute ten-year limitation period.<sup>6</sup> The UK Government’s economic and finance ministry, HM Treasury, also has a consultation report currently open for commentary, noting that “Any limits must be balanced with protecting consumers’ ability to access simple and quick redress through the [Financial Ombudsman Service], particularly in relation to longer-term products, such as pensions, mortgages and long-term investments, where knowledge of the cause to complain may not emerge until a significant amount of time after the event.”<sup>7</sup>

We recommend that retail investors should be allowed to lodge complaints beyond the six-year period, as long as it is within a “reasonable” timeframe, determined by guidelines that consider various factors contributing to the delay in making a complaint, such as low financial literacy, lack of awareness of pertinent facts, language barriers, health issues, or other intervening factors.<sup>8</sup> This change would significantly improve access to justice for vulnerable retail investors and echo the

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<sup>6</sup> FCA, *CP25/22: Modernising the redress system*, (July 2025, Updated 26 August 2025), s2.46, online: [here](#).

<sup>7</sup> HM Treasury, *Review of the Financial Ombudsman Service Consultation*, p. 27, online: [here](#).

<sup>8</sup> For details see, “Investor Advisory Panel: Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment Related Complaints”, online: [here](#).

reforms to limitation periods that other regulatory bodies within the international financial services sector are currently considering.

### **Additional Comments on the Limitation Period**

In order to provide fair and accessible dispute resolution services, we would also take this opportunity to request that OBSI's decisions on any complaints that have been determined to be submitted outside the current six-year limitation period be published to provide additional guidance to retail investors on how OBSI interprets the limitation period.

Currently, OBSI's Terms of Reference describe a valid complaint as taking place "no more than six years after the Complainant knew or reasonably ought to have known about the problem or issue giving rise to the Complaint, having regard to what a reasonable person in the Complainant's circumstances, with the Complainant's abilities and limitations ought to have known."<sup>9</sup> For a retail investor navigating the complaint process for the first time, there are only four examples available on the OBSI website to assist them in interpreting the limitation period.<sup>10</sup> In its 2024 Annual Report, OBSI disclosed that 22 banking cases and 25 investment cases were closed as a result of exceeding the six-year limitation period, but it did not provide context on how those decisions were made.<sup>11</sup> As a point of comparison, the UK Financial Ombudsman Service currently maintains a publicly accessible, online, searchable database of all decisions made since April 1, 2013, with the identities of complainants anonymized.<sup>12</sup> At a minimum, a similar OBSI database of limitation period-related decisions would greatly assist retail investors in assessing their dispute resolution options.

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<sup>9</sup> Ombudsman for Banking Services and Investments, *Terms of Reference*, (16 June 2022), Part 5 – Complaints to OBSI s 5.1(e), online: [here](#).

<sup>10</sup> Ombudsman for Banking Services and Investments, *Limitation Period*, online: [here](#).

<sup>11</sup> *Supra* note 3 at 46, online: [here](#).

<sup>12</sup> You can view and search the FOS decision database [here](#).