



*ADR Chambers Banking Ombuds Office (ADRBO)*

# **ANNUAL REPORT 2009**

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*ADR Chambers Banking Ombuds Office (ADRBO)*

# ADR CHAMBERS BANKING OMBUDS OFFICE

## FIRST ANNUAL REPORT

1. This report covers the first year of operation of the ADR Chambers Banking Ombuds Office (ADRBO). ADRBO provides an independent appeal process for banking clients of the Royal Bank of Canada (RBC) who do not agree with the observations and recommendations made by the RBC Ombudsman. ADRBO began operations on November 1, 2008. According to its Terms of Reference, ADRBO's authority and responsibilities include providing information to the public about the process for submitting and commencing complaints, receiving complaints for investigation, and investigating complaints with a view to their resolution by agreement or as a result of ADRBO's recommendations.
2. ADRBO is headed by the Banking Ombuds, who has both a legal background and training and experience in dispute resolution. The Banking Ombuds is supported by an administrative staff of three persons, and an investigative staff of five. ADRBO staff members have training in dispute resolution, complaint handling, and consumer banking. Several staff members, including the Banking Ombuds, are able to work in both French and English.
3. The initial contact person, located in ADRBO's Toronto office, responds to inquiries and answers questions about the complaint procedure. There are separate toll-free phone lines for calls in French and calls in English. If the customer has not completed the RBC internal complaint resolution process, the contact person refers the customer to RBC so that he or she can complete the process. If the customer has completed the internal RBC complaint resolution process, the contact person makes a prima facie assessment of whether the complaint falls within the scope of ADRBO's mandate. If it does not, an attempt is made to refer the customer to the appropriate complaint resolution process or entity. ADRBO also maintains a website ([www.bankingombuds.ca](http://www.bankingombuds.ca)) with basic information and documentation in English and French.
4. If the client has completed the internal RBC complaint resolution process and appears to be eligible for the ADRBO review, the contact person sends the complainant a Complaint Submission Form, Consent and Confidentiality Agreement, and a copy of the ADRBO Terms of Reference. Upon return of the signed submission and confidentiality agreement, the complaint is forwarded to the Banking Ombuds, who is also based in Toronto. The Banking Ombuds then assesses the complaint to determine whether it is within the scope of ADRBO's mandate and whether it requires a full investigation. The Banking Ombuds may seek to promote a resolution of the complaint by agreement between the complainant and RBC. If ADRBO is of the opinion that an investigation is highly unlikely to yield a different conclusion than RBC's position, or to result in any compensation to the Complainant, ADRBO may inform the complainant accordingly.
5. ADRBO strives to ensure that all investigations it performs are conducted in an objective, impartial and thorough manner while respecting the rights and time constraints of the individuals involved. The investigator conducts interviews and reviews documents from both the complainant and RBC, in order to determine whether there has been an act or omission by RBC in the performance of a banking service that has caused the complainant loss, damage or actual harm. The investigator issues a written report, which may recommend that RBC compensate the client or take other action. Although ADRBO's recommendations are non-binding, any refusal or failure by RBC to accept an ADRBO recommendation will be posted on ADRBO's website. As will be discussed in greater detail below, RBC has accepted and complied with all recommendations made by ADRBO during the period under review.

6. During the period under review, there were 541 contacts to ADRBO. Nearly all of these were assigned a file number, for a total of 532 files opened, even when the complainant was then referred to RBC to complete the internal complaint and ombuds process. In total, just over 300 complainants were referred to RBC after their initial contact with ADRBO, in most cases because they had not yet exhausted RBC's internal complaint process. This has been at a fairly consistent average of 25 contacts per month. As many callers had in fact been referred to ADRBO by RBC branch and call centre personnel, ADRBO has recommended that RBC reinforce front line staff and call centre consultant training with respect to the internal complaint sequence (branch, customer care, RBC Ombudsman's Office), and clarify the wording in its pamphlet "How to Make A Complaint."
7. There were 90 matters in which, following the initial contact, the complainant did not pursue matters with ADRBO, primarily by failing to return the requisite paperwork.
8. Twenty-seven files were assigned for investigation, and twelve final reports were issued. Of these, six recommended the payment of compensation and/or other action (e.g., a letter of apology) by RBC. Some of these are discussed in greater detail below under "Case Studies." As indicated above, RBC has confirmed its acceptance of and compliance with all of ADRBO's recommendations.
9. One matter was resolved to the complainant's satisfaction during the early part of the investigation, and one was the subject of an initial view letter, informing the complainant of ADRBO's view that an investigation was highly unlikely to yield a different conclusion than RBC's position, or to result in any compensation to the complainant. As at October 31, 2009, twenty-eight files were under review or investigation.
10. Fifty-four complaints were rejected as falling outside the scope of ADRBO's mandate, some at the initial screening stage and others upon review by the Banking Ombuds, for reasons such as pending or completed litigation with respect to the subject matter of the complaint, or because the RBC action complained of involved RBC's commercial judgment (e.g., refusal to grant a mortgage or line of credit), or the complainant was not an RBC customer (e.g., refusal to cash a cheque drawn on an RBC account).
11. Section 16 of the ADRBO Terms of Reference requires ADRBO to make a recommendation on a complaint generally within 180 days of receiving it, unless it is prevented from doing so by unavailability of information. Of the twelve final reports issued during the period under review, five were issued within that time frame, while seven exceeded it, the longest period between complaint and recommendations amounting to around seven months. This is somewhat misleading, as the trigger date is the date of initial contact, at which point the file is often not ready to go to the Ombuds or an investigator. As indicated above, a case number is assigned at the time of initial contact, even – for example – when a complainant is referred to RBC to complete the bank's internal complaint process. In other cases, there may be a significant gap between initial contact and return of signed paperwork. If one looks instead at the time between assignment of a file to the Ombuds or an investigator and issuance of a final report, the 180-day deadline was exceeded in only two cases, in one by two weeks and in the other by six days. ADRBO continues to strive to streamline its case processing and aims to complete all investigations well within the 180-day time limit.

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## AT A GLANCE

|   |            |
|---|------------|
| Initial contacts                                | 541        |
| Files opened                                    | 532        |
| Files abandoned by complainant                  | 90         |
| Referred to RBC                                 | 310        |
| Out of scope                                    | 54         |
| Full investigation and report                   | 12         |
| Resolved without full investigation             | 1          |
| Initial view letter                             | 1          |
| Average time from assignment to recommendations | 3.5 months |
| Under review or investigation as at 10/31/09    | 28         |

### TYPES OF COMPLAINTS INVESTIGATED NOVEMBER 2008-OCTOBER 2009

- ❖ Mortgage foreclosure; notice
- ❖ Euro account/facility
- ❖ RBC Visa travel rewards refund
- ❖ Line of credit reporting error
- ❖ Overdue Visa payment debited from current account
- ❖ Scope of VIP account benefits
- ❖ Termination of banking relationship
- ❖ Money order/wire fraud
- ❖ Debt consolidation
- ❖ Account opening promotional offer
- ❖ Validity of ATM deposit
- ❖ Mortgage holdback; rate type adjustment
- ❖ Automatic mortgage renewal at unfavourable rate

## CASE STUDIES\*

### *Line of Credit Reporting Error*

Following a reallocation of mortgage funds, the client received several monthly statements that erroneously indicated a higher credit line than was actually available. The client relied on this in making certain expenditures. When he attempted to withdraw cash in order to make payment, he discovered that his available credit was in fact less than reported and insufficient to cover these expenditures. In order to make these payments, the client was forced to use an overdraft facility on an account at another bank, at a rate of interest significantly higher than that of his RBC credit line.

RBC acknowledged the reporting error, and offered the client a financial gesture for the personal and financial inconvenience experienced. The sum offered was derived from the difference between the interest rate at which he had borrowed the funds and the rate on his RBC line of credit. RBC did not require him to substantiate the amount actually borrowed, the length of the loan or the rate of interest.

The client was not satisfied with this offer and referred the matter to ADRBO. He felt that RBC should pay the full cost of the expenditures, which he would not have made but for the mistaken belief that he had available credit.

ADRBO contacted the client and explained that it could recommend compensation aimed only at compensating him for the actual loss caused by the mistaken reporting. The client insisted that RBC's offer was not sufficient to compensate him for his loss. As the bank had not requested substantiation, he was invited to submit evidence of his actual loss to ADRBO, but did not do so. In its report, ADRBO noted that, in the absence of any evidence of actual loss, the complainant's loss consisted of the difference between the interest rate at which he could have borrowed funds under his line of credit, and the rate at which he actually borrowed them. ADRBO concluded that RBC's offer was adequate to compensate the complainant for his actual loss, and recommended that RBC re-extend the offer. RBC accepted the recommendation, and has informed ADRBO that the funds have been disbursed.

### *Account Opening Promotional Offer*

The client responded to a promotional offer of an mp3 player for opening a new account. Non-RBC customers could qualify for this promotion by opening a certain type of account and executing certain transactions. Existing RBC clients were eligible if they changed the type of account they held and then executed certain transactions. The client had held RBC accounts in another province, but had been informed that these could not be transferred to his new place of residence and would need to be closed; he would have to open a new account. When he inquired about qualifying for the promotional offer, he was instructed to call Royal Direct, where he was told that he could qualify by opening an RBC Signature No Limit Banking account. He then opened that account in his new province of residence, and completed the required transactions.

According to RBC, the mp3 player could be expected within twelve weeks after qualifying. When an acquaintance who had opened his account more than a month later received his mp3 player, the client became concerned, but was assured by Royal Direct on several occasions that he would be receiving it soon. Upon further inquiry with Royal Direct, he was referred to his branch; the branch insisted that only Royal Direct could deal with the matter. After the promotion had expired, the client was informed by the branch where he had opened his new account that, because he had held active accounts in another province at the time the promotion commenced, he was considered an existing client, and would therefore have had to open an RBC VIP account in order to qualify, rather than a Signature No Limit account.

The client complained to the RBC Ombudsman that he had been induced to open the Signature No Limit Banking account by branch and Royal Direct personnel who knew he was closing accounts in one province and opening them in another, and that he wished to take advantage of the promotional offer. Had

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\* In order to protect the privacy of both complainants and RBC personnel, these case studies do not include personal, corporate or geographical identifiers, and certain facts may have been changed that are not relevant to the outcome of the case.

he been instructed, at the time, to open a VIP account in order to qualify for the promotion he would have done so. The RBC Ombudsman's Office found no basis for re-evaluating RBC's final decision that the client did not qualify for the promotional offer, and the client complained to ADRBO.

The ADRBO investigator found while the bank had not erred in deciding that the client did not meet the criteria for the promotion, there was evidence that the client had been misinformed by bank personnel, and was justified in having relied in good faith on the information provided. The investigator recommended that RBC provide the client with the mp3player or its monetary value. The Bank accepted the recommendation and has informed ADRBO that it has complied with it.



## TERMS OF REFERENCE

The ADR Chambers Banking Ombuds Office Terms of Reference are as follows:

### PURPOSE

1. These Terms of Reference describe the scope of the mandate of the ADR Chambers Banking Ombuds Office ("ADRBO"), the process of the ADRBO upon receiving Complaints and the authority and responsibilities of the ADRBO Banking Ombuds and Investigators.

### DEFINITIONS

2. The definitions in the Terms of Reference are as follows:
  - **Banking Ombuds** means the individual designated by ADR Chambers to handle Complaints and coordinate the activities of the ADRBO in accordance with these Terms of Reference;
  - **Complainant** means any small business or individual customer of RBC (or their representative) who is making a Complaint to ADRBO. This would include a personal representative, guardian, trustee or executor;
  - **Complaint** means a written expression of dissatisfaction about the provision of a service provided by RBC to a Customer in Canada;
  - **Customer or Client** means an individual who, or small business that, requested or received a service from RBC;
  - **Financial Services** means a financial product or service, or advice about a financial product or service;
  - **Initial View Letter** means a letter sent to the Complainant and RBC when ADRBO is of the opinion that, based on the information received during the complaint assessment stage, a full investigation would not result in a different outcome or any recommendation for compensation. An initial view letter is usually brief, includes a summary of the facts based on ADRBO's contact with the Complainant and any documentation received from Complainant or during the complaint assessment stage, provides the Complainant with a brief explanation of why further investigation is unwarranted, and explains that the file is being closed;
  - **Investigator** means the individual performing an investigation;
  - **Standards** means any standards established by ADRBO for the conduct of the investigation and resolution of the Complaints;
  - **GIO** means the General Insurance OmbudService;
  - **CLHIO** means the Canadian Life and Health Insurance OmbudService;
  - **OBSI** means the Ombudsman For Banking Services and Investments; and
  - **Industry OmbudService** means any of the OBSI, the CLHIO and the GIO.
3. References to the male gender include, where the context allows, the female gender and vice versa and references to the singular number include, where the context allows, the plural number and vice versa;
4. References to sections and paragraphs are to sections and paragraphs of these Terms of Reference.

### ADR CHAMBERS BANKING OMBUDS OFFICE AUTHORITY AND RESPONSIBILITIES

5. The ADRBO will:
  - adhere to these Terms of Reference;
  - provide information to the public about the process for submitting and commencing Complaints;
  - receive Complaints for investigation;
  - assess incoming Complaints to determine whether they are within its mandate;
  - review Complaints in order to ascertain whether a full investigation is warranted;
  - investigate Complaints with a view to their resolution by agreement or as a result of the ADRBO's report (subject to the restrictions in these Terms of Reference);
  - where appropriate, make recommendations to both RBC and Complainants to resolve Complaints;
  - not disclose confidential information about Complaints; and



- not provide other professional advice in the form of legal representation or advice, nor financial representation or advice to a Complainant or to RBC.
6. ADRBO will act at all times in an independent and impartial manner and not advocate on behalf of RBC or the Complainant.
  7. The Banking Ombuds may act as Investigator and/or delegate responsibilities to other Investigators and staff of ADRBO in the investigation and processing of a Complaint.
  8. ADRBO and its staff will act in compliance with privacy rules, privacy legislation and applicable codes of conduct. ADRBO will ensure that all members of its staff are aware of and comply with the codes of conduct, privacy policy and procedures and duties to both the Complainant and RBC.
  9. ADRBO will report to RBC information regarding any threat to RBC staff or property that may become apparent during its duties.

#### **ADR CHAMBERS BANKING OMBUDS OFFICE MANDATE**

10. ADRBO may investigate any Complaint received if all of the following conditions apply:
  - the Complaint is submitted to ADRBO by the Complainant to whom or for whom the financial service in question was provided by RBC or its representative. It is desirable that all persons with an interest in the Complaint, such as joint account holders, make the Complaint. Nevertheless, ADRBO may decide that the non-participation of a person with an interest in the Complaint does not prevent the consideration of the Complaint, provided that all necessary consents to release confidential information have been obtained.
  - RBC has received a Complaint and rejected the Complaint or made a recommendation for resolution of the Complaint, but the Complainant has not accepted the recommendation proposed by RBC. It is anticipated that RBC will usually make its recommendation within 90 days of the submission of the dispute to the RBC Ombudsman Office. ADRBO may investigate a complaint if more than 90 days has passed since the complaint was submitted to the RBC Ombudsman Office and, in the opinion of ADRBO, it is not reasonable to give RBC more time to complete its investigation.
  - the Complaint has been made to ADRBO within 180 days of RBC's rejection of or recommendation for resolution of the Complaint. ADRBO may receive and investigate a Complaint for a period of up to 12 months after RBC's rejection of or recommendation for the Complaint if it is considered fair and reasonable to do so.
  - the subject matter of the Complaint by the same Complainant (or any one or more of a group of Complainants) was not previously considered by ADRBO or OBSI. Where a Complaint has been previously considered but, in the opinion of ADRBO, relevant new information is available, a Complainant may request that RBC reconsider the Complaint in light of the new information. After RBC considers the Complaint or if RBC refuses to reconsider its recommendations, the Complainant may request that ADRBO reconsider the Complaint.
  - the subject matter of the Complaint by the same Complainant (or any one or more of a group of Complainants) has not been or is not the subject of any proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body, unless RBC consents to the investigation in such circumstances.
  - ADRBO has received appropriate consents concerning the release and treatment of confidential information from all necessary parties and any other agreements or releases that are considered appropriate in the circumstances in the Consent and Confidentiality Agreement, and
  - the Complaint is being pursued reasonably by the Complainant and not in a frivolous, vexatious or threatening manner.
11. ADRBO will not investigate or shall cease to investigate Complaints:
  - To the extent that their subject matter materially relates to:
    - a. The general interest rate and risk management policies and practices of RBC,
    - b. The pricing of Financial Services by RBC,
    - c. The scale of fees or charges generally applicable to Financial Services offered to Customers of RBC in similar circumstances, or
    - d. The Commercial Judgment of RBC, unless RBC has made a Commercial Judgment that was biased, incomplete, or otherwise unfair.

- the subject matter of which ADR Chambers has or may reasonably be perceived to have a material interest. In those circumstances, ADRBO will notify the Complainant and RBC and will be entitled, at its discretion, to refer the Complaint to an alternative organization or to advise the Complainant of the ability to access the legal system or private arbitration.
  - made by unrelated Complainants based on different facts that raise the same or similar issues with the object of making a “class action-type” recommendation; or
  - where ADRBO decides that there is a more appropriate place for them to be dealt with, such as a court of law, a regulator, an arbitration procedure or any other dispute resolution process.
12. ADRBO may proceed with an investigation of a Complaint that is also being investigated by any regulatory body having authority over RBC. Should ADRBO defer consideration of or decline to consider the Complaint, it shall notify the Complainant and RBC of its decision, any further steps that ADRBO may consider taking following the completion on the regulatory investigation, and any other dispute resolution alternatives that may be available to the Complainant.
  13. ADRBO may investigate a Complaint involving a claim for any monetary amount, provided that the Complaint falls within the mandate under these Terms of Reference.
  14. Where, in the opinion ADRBO, the subject matter of a Complaint (in whole or in part) is one in which the Industry OmbudService for insurance, securities or mutual funds has expertise and the Complainant and RBC consent, ADRBO may cooperate with that Industry OmbudService in the investigation of the Complaint and may, if appropriate, make a recommendation jointly with the other Industry OmbudService for the resolution of the Complaint. Similarly, ADRBO may cooperate with another Industry OmbudService in the investigation and resolution of a Complaint referred to ADRBO by that Industry OmbudService. Complaints relating to RBC’s insurance business should be referred to GIO and CLHIO. Complaints relating to RBC’s securities dealers or mutual fund subsidiaries should be referred to OBSI.
  15. ADRBO shall determine the procedures for filing a Complaint and for reviewing and investigating Complaints, having regard for these terms of reference. ADRBO shall not be bound by the rules of evidence. ADRBO and its Investigators shall use their judgment to evaluate the quality of the evidence, the weight that should be attached to it, and its effect on the final outcome of the investigation. ADRBO will determine if a Complaint falls within its mandate under these Terms of Reference and, in reaching this decision, may consider representations from the Complainant and from RBC.
  16. ADRBO will make a recommendation on a Complaint within 180 days of receiving the Complaint (unless the unavailability of the information prevents ADRBO from making its recommendations within 180 days). Receipt of a Complaint will be acknowledged to the Complainant within 3 business days of ADRBO receiving the Complaint and notification to RBC of the receipt of a Complaint will be given within 30 days of ADRBO receiving the Complaint.
  17. RBC will appoint the RBC Ombudsman as the final RBC internal arbiter of unresolved customer complaints and shall:
    - fully cooperate with and assist ADRBO in the investigation of a Complaint that has been accepted by ADRBO;
    - provide all non-privileged information (such as notes, correspondence including emails and facsimiles, account statements, customer records from internal databases, transaction records, opening agreements, internal policies, etc. relating to the subject matter of the Complaint) in its possession or control, as soon as is reasonably practical, unless RBC demonstrates to ADRBO’s satisfaction that the disclosure of the information would likely place RBC in breach of the law or its duty of confidentiality to a third party where consent to disclose has not been obtained, despite its best efforts to obtain that consent; and
    - communicate to Complainants about RBC’s internal Complaint handling processes and the right of escalation of an unresolved Complaint to ADRBO.
  18. The ADRBO process will be confidential. The discussions and correspondence of the Complainant, the Complainant’s representatives, RBC and ADRBO that form part of the ADRBO process will not be disclosed or used in any subsequent legal or other proceedings. The files of ADRBO are confidential and are protected from disclosure for all purposes. In addition, the ADRBO Office and its employees will not be called to testify in any subsequent legal or other proceedings. A Consent and Confidentiality Agreement will be signed by the Complainant when ADRBO agrees to review the Complaint.

19. If any person discloses information to ADRBO and requests that it not be disclosed to another person, ADRBO will not disclose the information to the other person except with the consent of the person who disclosed the information to ADRBO. If consent is not given and the information is prejudicial to the other party to the Complaint, ADRBO will not use that information to make a recommendation adverse to that person to whom the information is denied, except as provided in Section 20 below.
20. ADRBO may take account of RBC's proprietary systems and security measures of which the ADRBO Office has knowledge, even though no disclosure of those systems and measures has been or will be made to the Complainant.
21. If the ADRBO becomes aware of systemic issues or a pattern of complaints, ADRBO will raise the issue with RBC so that it can be addressed and resolved.
22. As part of the exercising of its functions and responsibilities, ADRBO will have due regard to its effective, economic and efficient operation.

#### **ADR CHAMBERS BANKING OMBUDS OFFICE RECOMMENDATIONS AND REJECTIONS OF COMPLAINTS**

23. ADRBO will not make a recommendation, or reject a Complaint, except in accordance with the provisions of sections 24 to 31 below.
24. ADRBO will review each complaint in order to determine whether it can be addressed on the basis of the information provided by the client and information or documentation obtained from RBC. Where ADRBO is of the opinion that it is highly unlikely that an investigation would yield a different conclusion than the RBC's position, or would result in any compensation to the Complainant, ADRBO may issue an Initial View Letter. In cases in which RBC has made a settlement offer that the complainant has found unsatisfactory, ADRBO may attempt to facilitate a settlement by discussing the matter with the Complainant and RBC.
25. After the investigation of a Complaint, ADRBO may make a recommendation for compensation if it is of the opinion that the Complainant has suffered loss, damage or harm because of an act or omission by RBC in the provision of Financial Services.
26. While ADRBO is investigating a Complaint, the Banking Ombuds and/or Investigator may seek to promote a resolution of the Complaint by agreement between the Complainant and RBC. While ADRBO is investigating a Complaint, RBC and the Complainant may continue to seek to resolve the Complaint themselves. If RBC and the Complainant do not resolve the Complaint, ADRBO will complete the investigation of the Complaint and make a recommendation for the resolution of the Complaint.
27. ADRBO's recommendation:
  - will be in writing;
  - will include a summary of the Investigator's reasons;
  - will first be provided to the parties in draft;
  - may be made jointly with another Industry OmbudService in the circumstances describe in Section 15; and
  - is not binding on RBC or the Complainant.
28. ADRBO will make a recommendation or reject a Complaint with reference to what is, in ADRBO's opinion, fair and reasonable in the circumstances to the Complainant and RBC. In determining what is fair, the Investigator will take into account general principles of good financial services and business practice, law, regulatory policies and guidance, professional body standards and any relevant code of practice or conduct applicable to the subject matter of the Complaint. To identify principles of good financial services and business practice, the Investigator may, where appropriate, consult within the financial services industry or elsewhere. ADRBO will not be bound by any of its previous recommendations.
29. ADRBO's recommendation should seek to achieve a resolution of a Complaint that is satisfactory to the Complainant and RBC. ADRBO will not recommend compensation that would be greater than an amount that the Investigator considers to be appropriate to compensate the Complainant for loss, damage or actual harm suffered by the Complainant by reason of the acts or omissions of RBC in the provision of a Financial Service.

30. If RBC does not accept ADRBO's recommendation, ADRBO will post on the ADRBO website its recommendation and RBC's refusal to accept it, as well as describing the Complaint in a general way without revealing any confidential information of either RBC or the Complainant (except to the extent RBC or the Complainant agrees to such disclosure of their respective confidential information). RBC's refusal to accept the recommendations and the general circumstances of the case shall also be reported in the ADRBO annual report referred to in Section 31.
31. ADRBO will maintain a website available to the general public which describes the Complaint review process, its general mandate, contact information and other information which ADRBO deems appropriate. ADRBO will also prepare and make available to the general public an annual report containing:
  - statistics and other general information of the Complaints it has processed in the year (with all personal and corporate identifiers removed), and
  - any recommendations referred to in Section 30.

## ADRBO CONTACT INFORMATION

ADR Chambers Banking Ombuds Office  
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