

Steps to Update Policies and Procedures

ADR Chambers Banking Ombuds Office (“ADRBO”) sought to enhance its operations and the consumer-friendliness of its process by moving forward with improvements to its policies and procedures following the Financial Consumer Agency of Canada’s (“FCAC’s”) Industry Review, titled “The Operations of External Complaints Bodies”, released on February 19, 2020. In addressing the recommendations laid out by the FCAC in its Review for External Complaints Bodies (“ECBs”), ADRBO formally adopted the ADRBO Accessibility Policy and also revised its Terms of Reference (“TORs”), which are the standard protocols followed during the course of assessing and investigating Complaints.

Update to TORs Section 24

One revision ADRBO has made to its TORs narrows the circumstances in which ADRBO can issue an Initial View Letter. An Initial View Letter is sent to the Complainant and the Member Bank when ADRBO determines that a Complaint is outside its mandate to investigate or should otherwise not be investigated, for the reasons laid out in the TORs. By revising Section 24 of the TORs to reduce the instances where ADRBO can issue an Initial View Letter, ADRBO ensures that more consumer Complaints will be investigated.

Pursuant to the former Section 24 of the TORs, ADRBO could issue an Initial View Letter for cases where ADRBO believed that it was “highly unlikely that an investigation would either yield a different conclusion than the Member Bank’s position, or result in any compensation to the Complainant”. For instance, if the Member Bank could show that its processes had been properly adhered to and a thorough investigation conducted for which ADRBO believed it would be “highly unlikely” to come to a different conclusion with the available evidence, ADRBO could proceed with an Initial View Letter and *not* investigate.

However, under the revised Section 24, ADRBO can issue an Initial View Letter only when ADRBO “believes that an investigation is not warranted as the complaint is out of ADRBO’s mandate”. This revision should result in an increase in the number of Complaints ADRBO refers to investigation, as the more subjective “highly unlikely” category of Complaints is eliminated. Unless the Complaint is out of ADRBO’s mandate for another reason (e.g. it relates to a business risk decision of the Member Bank, it is already being considered by a Court of law, etc.) ADRBO must investigate, even if it appears that it might be “highly unlikely” that the outcome could be different than what the Bank determined.

Update to TORs Section 10

ADRBO also revised its mandate as set out in Section 10 of the TORs. Section 10 lays out all of the requirements necessary for ADRBO to consider a Complaint submission “complete” and to be able to open and review the case. For instance, ADRBO requires

a Consent and Confidentiality Agreement to be signed by those making the Complaint, as well as a complete Complaint Submission Form to be provided by all persons with an interest in the Complaint. Generally, the Complaint must have been taken through the Bank's internal complaints-handling process all the way to the bank's highest level of complaints appeal; ADRBO will seek to obtain a copy of the Final Decision Letter from the bank's highest level of complaints appeal to start its own Complaint process.

Under the former Section 10 of the TORs, if there was no Final Decision Letter from the bank's highest level of complaints appeal, ADRBO could investigate a Complaint

“upon a Complainant's request, if more than 90 days [had] passed since the Complaint was received at the Member Bank's second level of complaint handling... and the Member Bank [had] sent a letter to the Complainant specifically advising that the 90-day period [had] expired”.

ADRBO would thus request the “90-day letter”, in place of a Final Decision Letter, from the Complainant before its own Complaint process could begin.

However, under the revised Section 10, and after the government's implementation of C-86 rules to reduce the bank's internal investigation period from 90 to 56 days, once again ADRBO has made it easier for the consumers to have their Complaint reviewed. If there has been no Final Decision Letter yet issued by the bank's highest level of complaints appeal, ADRBO can now investigate a Complaint

“upon a Complainant's request, if more than 56 days have passed since the Complaint was received at the Member Bank's second level of complaint handling... and the Complainant has provided documentation to ADRBO that demonstrates that the 56-day period has expired”.

This revision thus places the onus on the Complainant to show that the 56-day period has expired; however, the Complainant gains more control over the timing and progress of the Complaint process, as they do not need to wait for a formal “56-day letter” from the Bank to submit to ADRBO. The Complainant can now simply submit to ADRBO evidence of the date they sent their Complaint to the Bank's second level of complaint handling. This evidence usually would take the form of the email or letter in which they originally voiced their Complaint at the Bank's second level (level above Branch level). As long as the Complaint is dated, and that date was 56 days ago or more, ADRBO can accept the Complaint and proceed without a more formal proof of date from the Bank.

Formal Adoption of ADRBO Accessibility Policy

Finally, ADRBO formally adopted its ADRBO Accessibility Policy. While ADRBO was already operating under this Policy, ADRBO's Board formally ratified it in February 2020 to make it an official Policy document. ADRBO's accessible Complaint process is consistent with the principles of dignity, independence, integration and equality of

opportunity for people with disabilities. ADRBO is committed to ensuring equal access and participation for Complainants with disabilities.

While ADRBO need not know the specific nature of any Complainant's disability, Complainants should make their needs known to ADRBO to the best of their ability as soon as possible in the Complaint process so that ADRBO may determine the method of communication that works best for the Complainant and make appropriate accommodations. ADRBO always encourages Complainants to provide feedback on how ADRBO provides an accessible Complaint process.