

# OFFICE OF THE BANKING SERVICES OMBUDSMAN

(An agency created under the auspices of the Central Bank of Trinidad and Tobago)



## Annual Report 2004

Report on the Operations of the Office for  
the Year Ended December 31, 2004



# OFFICE OF THE BANKING SERVICES OMBUDSMAN

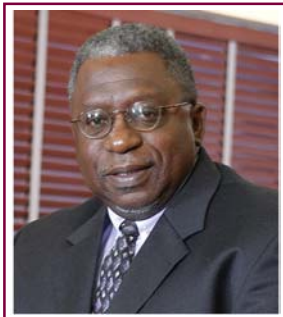
REPORT ON THE OPERATIONS OF THE OFFICE

FOR THE YEAR ENDED DECEMBER 31, 2004

The logo for the Banking Services Ombudsman (BSO) is located in the top right corner. It consists of the letters "BSO" in a serif font, centered within a circular emblem that has a horizontal line above and below the text.

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## GOVERNOR'S FOREWORD

I would like to congratulate the Office of the Banking Services Ombudsman for a very successful second year of operation.

During this period, the Office succeeded in making the wider public more aware of its existence and the services it provides through its outreach efforts and later through its new website. The Office also enhanced its credibility with its stakeholders through its considerable efforts to respond promptly to complaints raised by customers.

It is significant to note that the number of complaints for the second year declined, a trend that has continued into the current year. This is a positive sign and an indication that the Office is making a difference in the behaviour of both commercial banks and their customers.

From all indications, the commercial banks have increased their efforts to improve customer service. All the banks have now put in place structured mechanisms for handling complaints. Moreover, anecdotal evidence suggests that, in general, banks have been more diligent in settling their customers' complaints and this has resulted in fewer complaints coming before the OBSO. In some banks, the criteria for assessing the performance of a branch now include the branch's ability to deal with customers' complaints.

In May 2005, the Central Bank announced an expansion of the Ombudsman's office to cover the insurance industry which had come under the Bank's supervisory responsibility one year earlier. The Ombudsman's Office, renamed the Financial Services Ombudsman, has now increased its staff and has been reorganised to cope with its new responsibilities. Initially, much of the business relating to insurance complaints is being handled by consultants specifically hired for the purpose. The intention is, however, to intensify training of the FSO staff in both banking and insurance.

I would like to recognise the helpful role that the commercial banks have played in facilitating the transition from Banking to the Financial Services Ombudsman. The new entity is in line with the vision outlined in the Government's White Paper on Financial Sector Reform which sees a Financial Services Ombudsman, encompassing all financial services, as an important piece of the sector's overall architecture designed to strengthen market discipline and credibility in the financial sector.

Ewart S. Williams  
Governor  
Central Bank of Trinidad and Tobago

## PREFACE BY THE BANKING SERVICES OMBUDSMAN



The Office of the Banking Services Ombudsman (OBSO) opened its doors to the general public on May 19, 2003. The inaugural report dealt with the operations for the first eight (8) months to December 31, 2003. This report covers the second period of operations for the year ended December 31, 2004.

The Office continued its work during 2004 and with the experience gained during the first period, we were able to handle cases more expeditiously. We received complaints from customers throughout the length and breadth of Trinidad and Tobago from Central Trinidad, the deep south and along the east-west corridor and numerous places in Tobago.

As was expected, the number of cases fell somewhat. However, we continued to receive enquiries that demonstrated the lack of a full understanding of the financial transactions entered into by customers. This will be addressed in the coming year.

In keeping with the Central Bank's objective to bring the insurance and banking activities under one umbrella, our Office has begun discussions with the Central Bank and the insurance companies to include the operations of the Insurance Ombudsman services with that of the Banking Services Ombudsman. The expanded unit will be named the Office of the Financial Services Ombudsman. It is expected that the insurance scheme will operate much the same as that of the Banking Services Ombudsman's. In addition, it is expected that the operations for the inaugural period will be hectic but should settle down in the subsequent periods.

I appreciate the support provided by the Governor of the Central Bank, the assistance of the legal and other professional staff in providing advice and support when called upon to do so, and to my hard-working staff who ensured that the complaints are handled in a timely manner. I am grateful also for the co-operation displayed by the commercial banks without which the Office would not have been able to function as effectively as it did.

I am happy to have been of service to members of the banking community and look forward to extending the service to members of the insurance community in 2005.

A handwritten signature in black ink, appearing to read 'J. Chang', written over a horizontal line.

Judy Y. Chang  
Banking Services Ombudsman



## STATISTICAL OVERVIEW

**D**uring the year ended December 31, 2004, 156 complaints were received versus 154 for the first eight months to December 2003. Of those received in 2004, 20 met all the conditions under the terms of reference while 136 fell outside of the remit of the conditions attached to the operations of the Office. This compares to 25 and 129 respectively for the inaugural eight months of 2003. This was as expected for the first period because of the backlog prior to the opening of the Office.

Appendix I (page 3) shows the distributions for the year ended December 31, 2004 by categories of complaints and between qualifying and non-qualifying complaints. Appendix II (page 4) shows the figures for the eight month period to December 2003 and for the corresponding year ended December 31, 2004 in graphical format.

The number of complaints for each category and the percentages for the periods are more or less the same for the eight months to December 2003 as for the twelve months to December 2004. Except for card services, the same holds true when broken down between qualifying and non-qualifying complaints.

With respect to card services, twelve cases qualified in the eight months to December 2003 (representing 48% of all qualifying cases) versus only five (25%) for the twelve months to December 2004. Thirteen cases were classified as non-qualifying (representing 10% of all non-qualifying cases) to December 2003, versus twenty (15%) in the twelve months to December 2004.

### Activities During the Year

The staff of the Office of the Banking Services Ombudsman continued our visits to the outlying districts. During the year we visited Chaguanas and Sangre Grande.

One of our resolution officers was attached to the Canadian Banking Ombudsman's Office in Toronto to learn first-hand how they deal with complaints received. We are thankful for the Banking Ombudsman of Canada for affording us the opportunity for training.

Meetings were held individually with the Chief Executive Officer of each of the commercial banks to discuss the nature and number of complaints received from the respective banks and to indicate any trends and potential systemic problems that should be addressed.



The Office continued to receive enquiries from individuals wishing to know their rights and the procedures to follow and whether they had a legitimate case or not. There continues to be a lack of understanding of the implications of the transactions entered into with the banks. Customers do not fully understand and equally, the bank officials do not fully explain the implications of the transactions to their customers.

Even though the Office has been in existence for over 18 months, we continue to get complaints that date back prior to the cut-off date of January 1, 2003. Where the cases have merit, we take them to the banks for their consideration. The banks have been very co-operative and in some cases, made monetary settlements to their customers. We are indeed grateful to the banks for supporting the scheme and going beyond their terms of agreement.

We tried to assist in some cases that date back to the 1970's, 1980's and 1990's, even though they were before our cut-off date of January 1, 2003. In the more recent cases, the banks were able to retrieve records to show the disposal of the transactions. However, in the majority of cases where the transactions fell beyond the expected retention period for the banks, no information was available.

## Way Forward

In order to strengthen the financial services system and seek to treat with the root cause rather than the complaints, the Office has undertaken the following measures:

1. launching of our website so that customers and the general public can have access to information concerning the Office and its operations;
2. publishing banking tips in the newspapers on a regular basis with the objective of educating the general public on matters to avoid when conducting banking transactions, so problems may be avoided before they become complaints;
3. posting the banking tips on our website as new tips are published in the newspapers; and
4. distributing the brochure issued by the Office to all banking customers by asking the banks to include it in their bank statements, so that the scheme is widely known to all customers and the services of the Office may be utilized if necessary.



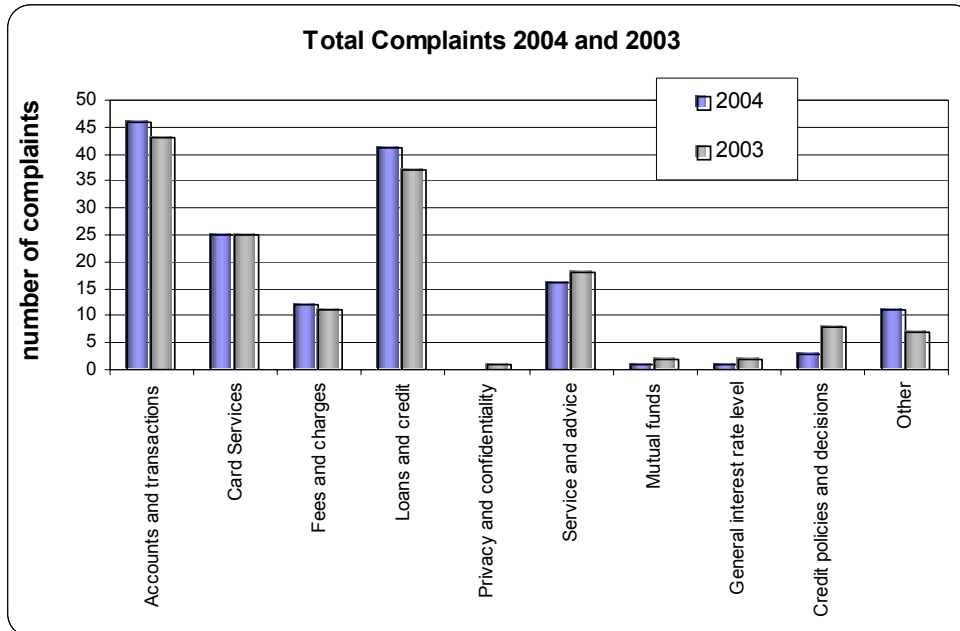
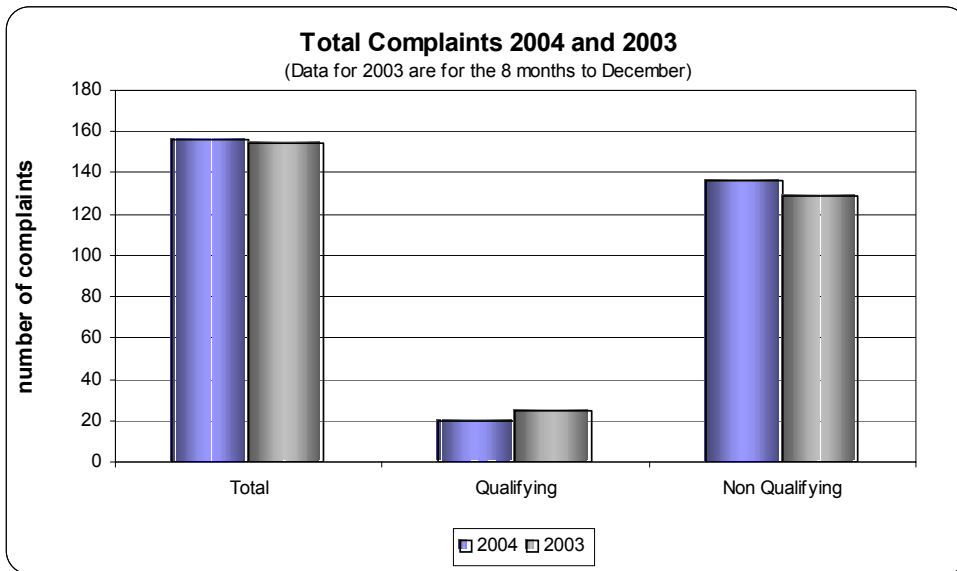
## Appendix I

**Office of the Banking Services Ombudsman  
Statistical Overview of Complaints  
Analysed by Type of Complaints  
12 Months to December 2004 vs 8 Months to December 2003**

	TOTAL		Qualifying		Non Qualifying	
	2004	2003	2004	2003	2004	2003
	Number					
Accounts and transactions	46	43	9	9	37	34
Card Services	25	25	5	12	20	13
Fees and charges	12	11	1	-	11	11
Loans and credit	41	37	1	2	40	35
Privacy and confidentiality	-	1	-	1	-	-
Service and advice	16	18	3	1	13	17
Mutual funds	1	2	-	-	1	2
General interest rate level	1	2	-	-	1	2
Credit policies and decisions	3	8	-	-	3	8
Other	11	7	1	-	10	7
<b>Total</b>	<b>156</b>	<b>154</b>	<b>20</b>	<b>25</b>	<b>136</b>	<b>129</b>
	Percent					
Accounts and transactions	29	28	45	36	27	26
Card Services	16	16	25	48	15	10
Fees and charges	8	7	5	-	8	9
Loans and credit	26	24	5	8	29	27
Privacy and confidentiality	-	1	-	4	-	-
Service and advice	10	12	15	4	10	13
Mutual funds	1	1	-	-	1	2
General interest rate level	1	1	-	-	1	2
Credit policies and decisions	2	5	-	-	2	6
Other	7	5	5	-	7	5
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Banking Services Ombudsman

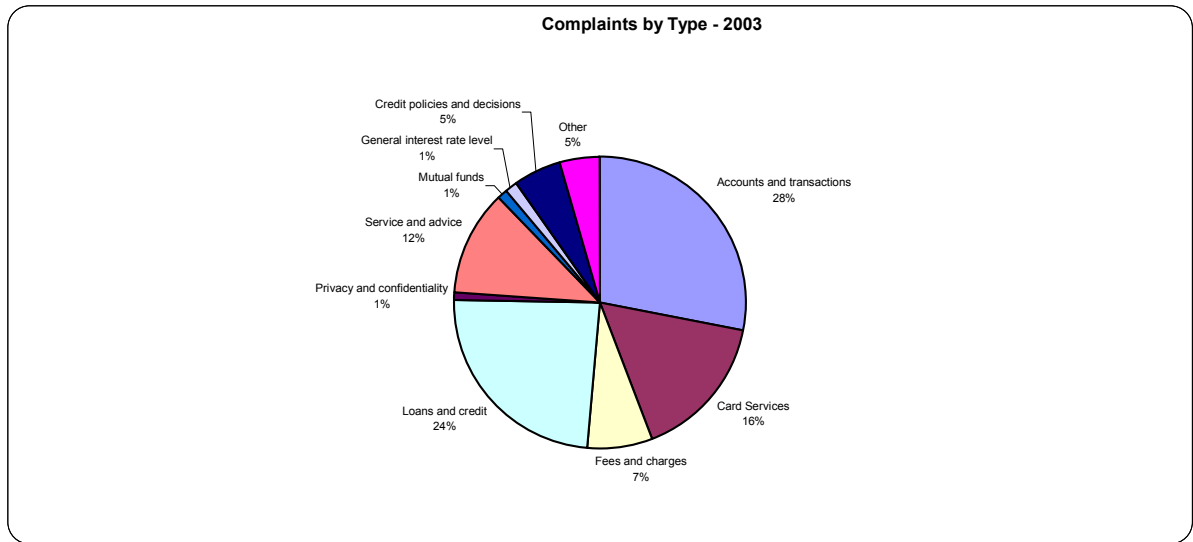
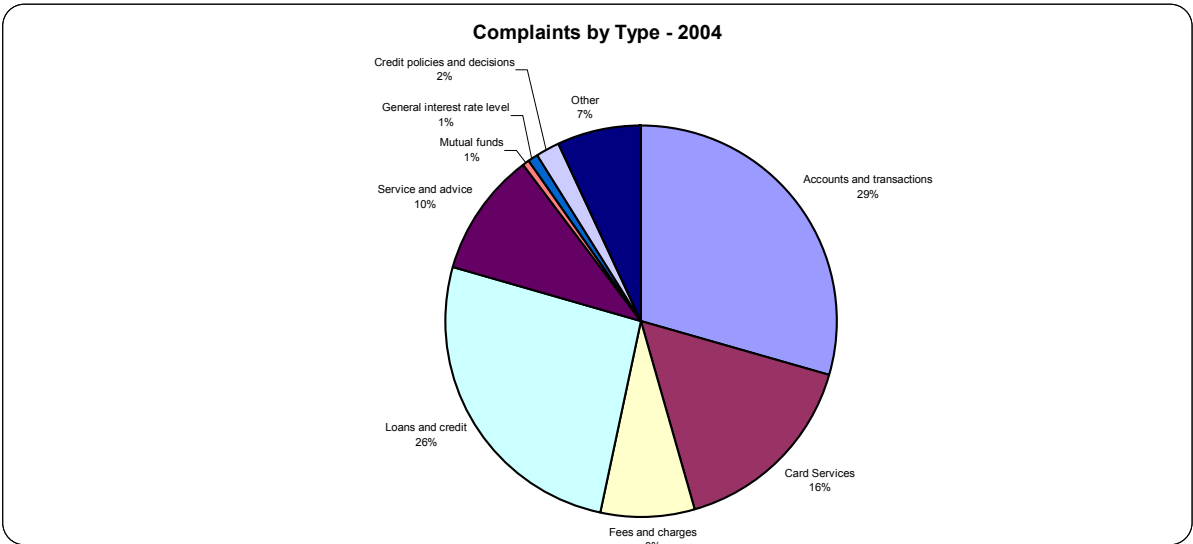
## Appendix II







### Appendix III





# THE BSO STAFF



*From left to right:* Nicola Robinson, Assistant Resolution Officer; Judy Y. Chang, Banking Services Ombudsman; Andrew Kowlesar, Resolution Officer.



*From left to right:* Andrew Kowlesar, Resolution Officer; Laurelle Ferrette, Secretary; Judy Y. Chang, Banking Services Ombudsman; Nicola Robinson, Assistant Resolution Officer; Cbar-Ann Thompson, Secretary.



## ESTABLISHMENT AND OBJECTIVES OF THE OFFICE

The Office of the Banking Services Ombudsman (OBSO) opened its doors to the general public in Trinidad and Tobago on May 19, 2003. The Office was established as a result of an agreement between the Central Bank of Trinidad and Tobago and the six members of the Bankers' Association, namely:

- Citibank (Trinidad and Tobago) Limited
- First Citizens Bank
- Intercommercial Bank Limited
- RBTT Bank Limited
- Republic Bank Limited and
- Scotiabank Trinidad and Tobago Limited

The main objectives of the OBSO are:

- (a) to receive complaints arising from the provision of financial services to individuals and small businesses; and
- (b) to facilitate the settlement of these complaints.

The Office provides a legitimate and independent channel through which customers can seek redress if necessary in their dealings with the financial institutions. Under the system, customers must first seek resolution at the financial institution where the problem arose. If the matter is not resolved satisfactorily at that level, the customer can then lodge a complaint with the Ombudsman.



## HOW THE PROCESS WORKS

Individuals and small businesses not satisfied with the treatment received from any of the six participating financial institutions concerning any financial service or product may file complaints with the Office and seek redress. A small business is defined as any business with assets (excluding lands and buildings) not exceeding TT\$1.5 million.

### The Complaints Process at the Financial Institution

The process of registering a complaint starts at the local branch or office of the financial services provider where the transaction occurred. The complaint should be submitted in writing and accompanied by all appropriate documentation, including brochures, statements and copies of contracts or agreements.

If a complaint is not settled at the level of the branch, the customer may then seek further redress with the dispute resolution centre of the respective bank. Under the Code of Banking Practice dated February 12, 2001, to which all members of the Bankers' Association of Trinidad and Tobago subscribe, all banks are obliged to set up a dispute resolution centre to handle customer complaints. The dispute resolution centre at each bank is usually staffed with a senior officer to liaise with customers as well as the OSBO. To date, the centres have all been very co-operative and willing to exchange information with the intent to bring closure to the complaints.

If complaints are not satisfactorily resolved using the internal process provided by the bank, the bank should advise the customer that he is entitled to take the case to the OSBO. All complaints must be lodged with the OSBO within six months of having exhausted all appeals at the bank.

There is no charge for the services provided by the OSBO. The terms of reference enable the Office to investigate a wide range of issues relating to the products and services offered by the banks and their licensed financial subsidiaries.



## The Complaints Process at the OBSO

Complaints should be submitted to the OBSO in writing. The document should summarise the nature of the complaint. If it is determined that the case falls within the terms of reference, the customer is requested to complete and sign a complaint form. Copies of all correspondence, as well as copies of all relevant documents and notes of conversations, should be included with the complaint form to allow our officers to assess and determine the case.

The complaint form explains the process and authorizes the bank to exchange information with the OBSO. If the customer is disabled or requires the assistance of a representative – a family member, friend or other person - the representative will be required to co-sign the form as an indication that confidential matters may be discussed with the third party.

The OBSO stipulates that all documentation and any other material related to the dispute resolution process must not be used in any subsequent legal or regulatory proceedings. In addition, the parties concerned must agree that the Ombudsman and staff of the OBSO and its advisors will not be called upon to testify in any legal proceedings.

Most qualifying cases are formally investigated and documented by the OBSO. Conclusions are based on the following criteria:

- overall fairness and equity;
- best practice in the industry;
- the accepted industry standards and practice;
- standards established by industry regulatory bodies, professional associations or the individual financial institution where the customer does business; and
- due regard to the law.

The process is not binding on the customer who may exercise the option of taking the case to the courts at any time during the process. The OBSO will consider the matter closed at that stage.

If an award is made by the Ombudsman and accepted by the complainant, it is binding on the commercial bank. However, if a bank does not comply with an award made by the Ombudsman, the Ombudsman is obliged to report the noncompliance to the Governor of the Central Bank. To date, no such award has been made.



## Complaints Outside of the Jurisdiction of the Ombudsman

Certain complaints are not investigated since they are specifically excluded under the terms of reference. These are:

- (i) competitive issues which are better left to the dictates of market forces, namely:
  - general pricing of products and services
  - general interest rate policies
  - credit-granting policies and risk management policies and procedures
  - general industry policies and procedures;
- (ii) matters that are currently or have been before the courts or an arbitration body or other dispute resolution process; and
- (iii) matters that have occurred before January 1, 2003. If however, the matter occurred prior to January 1, 2003 and the complainant only became aware of the matter after January 1, 2003, the complaint qualifies for consideration by the OBSO.

Even though matters that have occurred before January 1, 2003 are not included under the terms of reference, the OBSO has taken some matters to the banks if they were deemed worthy of consideration, and most have been favourably considered. It was felt that even though the OBSO has no jurisdiction over such matters, the banks, on the other hand, are not constrained by the same time limitations as those stated in the terms of reference of the OBSO.

Customers retain their legal rights and are free to pursue the matter in court if they are not satisfied with the decision of the OBSO. However, if the customer decides to go to the court or arbitration body first, the option of bringing the matter to the OBSO is not available since both of these processes are final and binding.



## SETTLEMENT OPTIONS AVAILABLE TO THE OMBUDSMAN

The options available for resolving financial complaints at the OBSO are as follows:

1. Settlement by Agreement;
2. Recommendation by the Ombudsman; and
3. Award by the Ombudsman.

### Settlement by Agreement

This involves mediation between the bank and its customer to arrive at an agreed position.

### Recommendation by the Ombudsman

If no agreement is reached between the bank and the customer, either party may request the Ombudsman to make a recommendation for settlement or withdrawal of the complaint. Once the recommendation of the Ombudsman is accepted by the customer and the bank in full and final settlement, the matter is resolved at this stage.

### Award by the Ombudsman

If the complaint is not settled by agreement or recommendation, the Ombudsman may make an award. The award is limited to \$500,000 and must not be greater than the amount required to compensate the customer for direct loss or damage suffered by reason of acts or omissions of the bank.

If accepted by the complainant, the award is binding on the bank. If not accepted by the bank, the Ombudsman is obligated to report the non-compliance to the Governor of the Central Bank. Although the Ombudsman has the power to make recommendations and awards, the preferred route is that of reaching agreement via mediation to find a solution acceptable to all parties, and this has been the case thus far.





## CASE STUDIES

### ***CASE 1 - OPERATION OF CHEQUING ACCOUNTS***

This case illustrates the need for customers to use their chequing accounts properly and not to issue any cheques if there are insufficient funds to cover them.

#### **CASE**

The customer alleged that she is the holder of a chequing account at a bank. She further advised that she used her cheque to purchase goods at an outlet. Two days later, she deposited cash into her chequing account via the ATM machine to cover the cheque drawn.

Her bank received the cheque for clearance two days after it was drawn but before the deposit was cleared. The cheque was rejected and returned to the outlet where the customer purchased her goods, thus causing penalty charges to accrue in respect of the bank transaction.

When the cash deposit was finally cleared by the bank, and the cheque was re-deposited by the outlet on the instruction of the customer, it was again rejected by the bank and returned because of insufficient funds. The account only had a few dollars more than the amount stated on the cheque and the penalty charges that were debited to the account for the first transaction, as well as the second, left the account with insufficient funds to cover the cheque.

The customer approached the Office of the Banking Services Ombudsman for assistance. She was advised that because her cash deposit to cover the amount was made after the cheque was drawn in favour of the outlet, and since she did not have sufficient funds in her chequing account to cover the penalty charges incurred for the cheque which was rejected on more than one occasion, the bank was within its right to continue to dishonour her cheque.

It was also pointed out to the customer that under the "Negotiable Instruments (Dishonoured Cheques) Act", it is illegal to issue cheques on accounts when there are insufficient funds to cover same.

***Lesson of the case:*** Do not issue cheques if you are aware that there are insufficient funds in the account to cover them. Penalty charges will be charged by the bank for processing the returned cheques. Your creditworthiness will be affected and this may prevent you from getting a loan from the bank in question or even another bank. Further, it is illegal to issue cheques with insufficient funds to cover them and you may be fined or even imprisoned.



## **CASE 2 - PENALTY AND INTEREST CHARGES FOR PAYING OFF A LOAN EARLY**

This case illustrates the need for customers to fully understand the implications of paying off a loan before its due date.

### **CASE**

The customer alleged that she took out a loan at a bank a few years ago but because of illness decided to pay off the loan early.

The customer further stated that she informed the bank of her intention and was advised that she would have to pay a penalty charge for paying off her loan earlier than originally contracted. The customer found this to be unreasonable since she approached another bank where she had another loan with a similar request, and was offered a rebate.

The customer approached the Office of the Banking Services Ombudsman and was advised that rebates, if any, depended on the type of loan. When a higher purchase loan is offered to a customer for a specific period, interest is calculated over the period of the loan and the total interest added to the principal. The amount is then divided by the number of months to repay in order to determine the monthly installment. If the loan is paid off in full before the end of the period, the customer can normally expect to get a rebate on the interest added to the original principal. However, if the loan is on the declining balance, there would not be a rebate since the interest is only calculated and paid on the balance outstanding each month.

In most cases, if a customer decides to pay off a loan in full before the end of the termination date, a penalty charge is applied; the amount could be as much as a few months of interest. Theoretically, this is to compensate the banks for the imputed loss of interest during the time it would take them to unlend the funds that would otherwise be loaned to the customer. This is typical of all loans and would usually form part of the terms and conditions.

***Lesson from the case:*** Before entering into a loan transaction, customers should ask the bank what penalty charges, if any, would apply if the loan is paid off before the due date and what other charges would apply, for example, penalty charges for late payment of any installment. In addition, they should ask what rebate of interest would be forthcoming in the event that the loan is repaid before the expiry date. Read the terms and conditions carefully and make sure that you fully understand the clauses, usually written in fine print, so that there are no surprises afterwards.



## CASE 3 - CREDIT CARD TRANSACTIONS

This case illustrates the need by customers to recognize the high interest and other finance charges associated with the financing of credit card purchases.

It is also important for customers to co-operate with their banks by furnishing information requested by them from time to time in order for them to assess their customers' continued creditworthiness since circumstances might have changed.

### CASE

The customer was the holder of two (2) credit cards acquired in the 1990s from a particular bank. In the year 2002, however, due to the mounting debt (including interest on unpaid balances) which accumulated over time, access to both cards was denied despite the fact that the customer met the minimum payments in full monthly. Even though both credit cards were blocked, the bank continued to charge the customer the annual membership fee.

Despite the customer's several protests for the blocking of the use of the said credit cards, the bank stated that in order to consider unblocking of same, the customer would need to provide proof of his personal income and a statement of his financial affairs. This, the customer refused to comply with since he said it was not a requirement initially when the cards were issued.

The customer further requested the bank to:

- a) combine the two (2) credit card balances into one in an effort to obtain softer payment arrangements (to which the bank refused);
- b) refund annual membership fees paid during the period that the cards were not in use;
- c) waive all credit card liabilities; and
- d) pay compensation for the loss of frequent flyer miles which would have accrued on new purchases, had the cards not been blocked.

The Office of the Banking Services Ombudsman explained to the customer that its Terms of Reference did not permit it to deal with matters relating to the risk management policies of a bank and, therefore, could not direct a bank to grant credit facilities which were not in accordance with the bank's credit granting policies.

In response to the customer's request for compensation for the loss of free travel (frequent flyer miles), the Office explained to the customer that it was the view of the Office that if there were no transactions since the account was blocked as a result of the non-fulfillment of the conditions attached to the granting of the credit facility by a customer, then the bank could not be expected to grant compensation for hypothetical miles which could not have been earned.

The Office of the Banking Services Ombudsman was, however, successful in obtaining the reversal of the customer's annual membership card fees paid during the period that the cards were blocked.

**Lesson of the case:** *Even though the minimum payment is made each month on credit card balances, when new purchases are charged to the account each month, the credit card balance will continue to escalate because of the heavy finance charges associated with unpaid balances and the debt could very easily and quickly become unmanageable. If the balance is paid in full each month by the due date, no interest or finance charges are applied and the customer can enjoy as much as 45 days interest on purchases.*



## NOTES



## NOTES



**Office of the  
Banking Services Ombudsman**

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