



Independent Review Report

Prepared for

**OmbudService for Life & Health
Insurance**

by

Robert Wells, Q.C.

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1. PREFACE & ACKNOWLEDGEMENTS

I was engaged on June 21, 2012, to conduct the scheduled three year review of the operations of OmbudService for Life and Health Insurance (OLHI). I was required to present the formal report of my review in the fall of 2012, with the reporting date being later confirmed as being November 8th. At that time I would be required to meet with OLHI's Board of Directors to formally present my Report and respond to any questions and observations which might arise at that time.

The review process and the preparation of drafts occupied the whole of the summer and much of the fall. I found it to be an intense learning process which could not have been accomplished without the assistance of OLHI's Executive Director & General Counsel, Ms. Holly Nicholson, its management, and in fact the entire staff of the Corporation. I also met with the Chair of the Board, Dr. Janice MacKinnon, and other Board Members directly involved with the process. Extensive meetings were held with representatives of the Life and Health Industry, with Regulators and even with a small number of consumers of OLHI's dispute resolution process. I am deeply indebted to all of the foregoing persons, without whose help the review could not have been conducted.

Honourable Robert Wells, Q.C.
November 2012

2. EXECUTIVE SUMMARY

The 2008 report resulting from the first independent review was a comprehensive document containing 60 recommendations. These recommendations were designed to make OLHI an effective and independent dispute resolution organization. Since that time, OLHI has worked very hard, both internally and externally with its stakeholders, to organize its work effectively by implementing these recommendations.

I have concluded that OLHI is fulfilling its mandate as prescribed by its founding documents, including the guidelines contained in the Framework. Specifically:

Guideline #1 Independence

OLHI meets this standard. OLHI has an appropriate mechanism for the appointment of Board Members that has resulted in a unified and functional board that provides objective and disinterested oversight. Its By-Laws ensure that industry members can only vote on a slate of directors chosen by the independent directors committee, thus resulting in independence. OLHI's operations and its personnel operate independently from the industry.

Guideline # 2 Accessibility

OLHI meets this standard. Improved consumer knowledge of its services is demonstrated by consistent growth in contacts with the public and increased complaint volumes over the last four years. OLHI's publications promote convenient and well identified access to its services at no cost to the consumer.

Guideline # 3 Scope of Services

OLHI meets this standard. In Canada ninety-nine percent of consumers with life and health insurance products have recourse to OLHI's services as those insurers are OLHI members. OLHI has a protocol for identifying and processing systemic complaints that is supported by the industry and incorporated into its Terms of Reference. OLHI adopts a liberal interpretation of its Terms of Reference and most complaints received fall within them.

Although there is an acknowledged "gap" in the industry pertaining to the inability to obtain compensation from independent agents, it is not a problem within OLHI's capacity to solve. A solution would be best found through a process involving regulators, independent agents, and the insurers.

Guideline # 4 Fairness

OLHI meets this standard. OLHI has a published fairness standard that governs its complaints review process and its complaint handling procedures are impartial.

Guideline #5 Methods & Remedies

OLHI applies a variety of methods in attempting to resolve disputes, commencing with a case assessment at the first level, fact finding and conciliation at the second level, and non-binding adjudication at the third and final level. These methods are publicized in OLHI's websites, consumer brochures and Annual Reports.

OLHI's processes are confidential and its files and work product are not admissible in court proceedings, nor are its staff compellable witnesses. Except in the province of Quebec where it is not permitted by law, insurers and consumers have agreed to suspend the applicable limitations periods until OLHI has completed its complaints handling process.

Although OLHI's complaints process meets the applicable standard, a small number of complaints at the initial stage could benefit from escalation to the 2nd level of review for more in-depth inquiry and analysis and possibly to the 3rd level. Accessibility to specialized advice (legal, medical, accounting, etc.) would assist OLHI in its ability to escalate complaints to the 2nd and 3rd levels of review.

Guideline #6 Accountability & Transparency

OLHI meets this standard with clear annual public reporting, including full financial reporting. OLHI also publishes all documentation regarding its operating structure, its Terms of Reference, and its governance practices on-line. OLHI's Governance Committee meets regularly to consider and adopt evolving best practices in corporate governance.

Guideline # 7 Third Party Evaluation

OLHI has conducted two extensive and independent reviews within the last four years. These reports have fully reviewed OLHI's effectiveness in achieving its purpose, as well as opportunities for improvement.

This report puts forward thirteen recommendations that are designed to strengthen and improve OLHI's core processes, i.e. resolving complaints made by consumers against member life and health insurance companies.

Implementation of the following four (4) recommendations, in particular, could help OLHI reach its full potential:

- Recommendation #7
If the OmbudService Officer's recommendation favours the complainants' position and is not accepted by the Insurer, OLHI should carefully consider escalating the matter to a Senior Adjudicative Officer, unless there is cogent reason for not doing so. In all cases the final decision to escalate or not rests with the Executive Director under OLHI's Terms of Reference.
- Recommendation #8
That additional funding should be provided by Members so that OLHI can seek specialized professional advice when appropriate.
- Recommendation #9
That a larger number of cases should be escalated to the OSO level to receive more extensive investigation and review.
- Recommendation # 10
That the services of the SAO should be used more extensively.

In conclusion, OLHI has expended considerable effort since 2008 to develop its process to the level of fulfilling its purpose. The implementation of the recommendations in this Report would help OLHI to attain its full potential as a provider of independent, fair, and impartial dispute resolution services between complainants and insurers.

3. HISTORY AND BACKGROUND

The OmbudService for Life and Health Insurance (OLHI) was incorporated in 2002. The original name was “Canadian Life and Health Insurance OmbudService.” For some years the insurance industry and its Regulators were becoming aware that there was a need for an independent organization to which purchasers of insurance products could direct complaints and requests for information. There are over 20 million purchasers of insurance products in Canada and it had become obvious that although the courts were and are the final arbiters of civil disputes, there was a need for independent and less formal mechanisms for complaints and dispute resolution, at no cost to the consumer.

As a result of that realization, three incorporated bodies were formed to deal with complaints and disputes in the three major areas in which insurance, banking and investment products are sold. These areas encompass banking and investments, general insurance, and life and health insurance. OLHI thus became the OmbudService for Life & Health Insurance.

For those persons who may be uncertain of the role of an “ombudsman” or ombudservice, a brief description is in order. The term “ombudsman” is of Norse origin and dates back to the 13th century. It passed through several definitions in Scandinavian countries, but the modern concept of the word began in Sweden where the Swedish Parliamentary Ombudsman was instituted in 1809 to safeguard the rights of citizens by establishing a supervisory agency, independent of the executive branch of government.

In its most frequent modern usage, an ombudsman

*is an official, usually appointed by the government or by parliament but with a significant degree of independence, who is charged with representing the interests of the public by investigating and addressing complaints reported by individuals. ... Whether appointed by the legislature, the executive or an organization ... the typical duties of an ombudsman are to investigate constituent complaints and attempt to resolve them usually through recommendations (binding or not) or mediation. ... Making a complaint to an ombudsman is usually free of charge. ...*¹

Such ombudsman roles are structured to function independently, by reporting to the CEO or Board of Directors of the founding institution and according to International Ombudsman Association Standards of Practice do not serve any other role in the organization.

¹ Wikipedia

Ombud organizations are common in many parts of the world including Canada where they have been established by Federal and Provincial Governments and by private organizations such as in this case the insurance industry, under the supervision of federal and provincial regulators. OLHI therefore is an ombudservice organized to be an independent and neutral recipient of complaints or disputes between insurance companies and their customers.

An ombud service is governed by rules which establish procedures which it must follow; in this case it will investigate complaints and hear the arguments of complainants and the insurance companies in an even handed manner. When it can negotiate an agreement between the disputing parties it will do so and in the case of OLHI if agreement is not reached, it will issue a nonbinding recommendation with respect to the dispute. With this brief introduction to the ombuds process, I will turn to OLHI'S Framework for Collaboration, Terms of Reference and Bylaws.

4. FINANCIAL SERVICES OMBUDS NETWORK – A FRAMEWORK FOR COLLABORATION

The foregoing document applies to three sister organizations which together make up a Financial Service OmbudsNetwork. These are the OmbudService for Life & Health Insurance (OLHI), the General Insurance OmbudService (GIO) and Ombudsman for Banking Services and Investments (OBSI). This review is a review of OLHI only and as the reviewer, my recommendations, observations and suggestions apply only to OLHI.

The Framework expresses seven guidelines which are:

- (1) Independence
- (2) Accessibility
- (3) Scope of Services
- (4) Fairness
- (5) Methods and Remedies
- (6) Accountability and Transparency
- (7) Third Party Evaluation

The framework document is available at website www.olhi.ca so I need not repeat it in this report, but I will refer to its salient points in order to give context

to the reader. I should also note at this time that I am writing not only for OLHI, the Life and Health Insurance Industry and the Regulators, but also for the consumers of life and health insurance products and the general public, because this report will be published. With that in mind I will refrain from the use of acronyms, which though understood by “insiders” are confusing and frustrating when encountered by the general reader. The only acronym which I will use consistently is OLHI which is the organization being reviewed.

The framework document provides for an accessible and effective complaint management system. It is intended to be an easily accessible dispute resolution system which is an impartial alternative to the legal system, is confidential and free of charge to the consumer. Regulators concluded that such a framework would result in an ombud service which would be independent of industry and at arm’s length from governments and able to offer an effective third party complaint resolution process.

Guideline No. 1, Independence: defines “independence” as meaning the absence of relationships with the affected industry which would cause a reasonable person to have doubts, or to question whether OLHI is able to evenhandedly resolve disputes and whether its Board of Directors is able to provide objective and disinterested oversight. The guidelines set forth structures to achieve the foregoing purposes including adequate funding. In OLHI’s case its funding comes solely from the member insurance companies.

Guideline No. 2, Accessibility: requires the articulation of a framework which will promote knowledge of OLHI’s services, ensure convenient and well identified access to its services and provide those services at no cost to consumers.

Guideline No. 3, Scope of Services: requires Terms of Reference to provide participating insurance companies and their customers with a clear understanding of the range of OLHI’s activities and the nature of the complaints with which it will deal.

Guideline No.4, Fairness: requires that the OmbudService will approach its work and make its recommendations by reference to a standard that is demonstrably fair to both the insurance company and the consumer.

Guideline No. 5, Methods and Remedies: requires OLHI to articulate the nature of its dispute resolution services, the results and possible remedies for a consumer whose complaint is assessed by it and lastly, the consequences which should follow non compliance by an insurance company with a recommended remedy, or non cooperation by a company with the OmbudService.

Guideline No. 6, Accountability and Transparency: to provide a framework for accountability for OLHI and accountability to the public in respect of its public interest goals, accountability to the Regulators in meeting their information requirements and transparency in the provision of information as to its organization and structure.

Guidelines No. 7, Third Party Evaluation: to provide a framework in which the structure and operations of OLHI will be the subject of knowledgeable, independent third party evaluation on a regular basis, to validate the effectiveness of the OLHI's ombud service in achieving its purpose and to identify opportunities for improvement.

5. TERMS OF REFERENCE

OLHI's Terms of Reference stress:

- (a) independence,
- (b) that it is not an advocate for either the life and health insurance company or the consumer, and
- (c) that it is a member of the Financial Services OmbudsNetwork, an industry based on an integrated consumer assistance system launched in 2002, to provide Canada's financial services consumers with recourse when they have concerns or complaints. It is endorsed by financial service regulators and sponsored by the financial services industry.

6. IMPORTANT DEFINITIONS

- (a) "Complainant," who may be an individual consumer of a member company's products or a consumer's personal representative, guardian, trustee or executor;
- (b) the "Dispute Resolution Process," which means an alternative method of resolving complaints outside of the court processes and includes mediation, consultation and arbitration;
- (c) "Services and/or Products" are defined as: life insurance, health insurance industry service and/or product for individuals or groups and include life insurance, supplementary health insurance, disability insurance, pensions, annuities, segregated funds and investment products.

OLHI must act within its Terms of Reference which can be found at website www.olhi.ca and in particular I will mention:

- (a) receiving complaints, as appropriate
- (b) advising the public about procedures for making complaints
- (c) considering and reviewing complaints
- (d) where applicable, making non-binding recommendations
- (e) not providing legal, medical, accounting or any other professional advice.

There are of course many other terms of reference which are well known by OLHI and the industry, but I list the foregoing because they may be of particular interest to consumers.

Another item of interest is the duty to advise the insurer of issues which may be systemic. Also, a consumer may contact OLHI and ask for information about insurance products. Providing information is valuable service.

I have provided the foregoing overview of the Terms of Reference, so that interested readers and consumers will be aware of their thrust and scope and may read them in full on the website, or at the very least, have some guidance in the manner in which OLHI deals with requests for information and complaints against individual insurance companies.

7. GOVERNANCE AND INDEPENDENCE

It is necessary for me in this context to deal with some of the By-Laws which govern the operations of OLHI and its Board of Directors, and in particular I will mention By-Laws which touch on the issue of OLHI's independence in the conduct of complaint handling and the dispute resolution process.

Membership in OLHI is open to all members of the Canadian Life and Health Insurance Association and other financial services companies, with the approval of OLHI's Board of Directors. At the moment OLHI's membership is made up of 101 insurance companies, ranging from the largest to the very small. There are rules for the conduct of meetings and the regulation of the roles of the Directors and the Members. All questions are decided by a majority vote and each member shall have one vote on any matter.

It is important for the public and consumers to be aware that there are industry directors and independent directors on OLHI's Board, and that the independent directors must always outnumber the industry directors. At this time

there are three industry directors and five independent directors. The independent directors are elected by member companies, from a list of nominees put forward by a committee of the independent directors. The Board Chair must always be chosen from the ranks of the independent directors and she chairs the committee of independent directors.

It is a clear requirement that independent directors must not have had any connection with a financial services provider for at least three years prior to appointment. Connection with a financial services provider means being a director, officer or employee of such a provider.

A similar restriction applies to directors, officers or employees of the Canadian Life and Health Insurance Association and current employees of federal, provincial, territorial or municipal governments, or any agency of the Crown. The latter group has a one year rather than a three year restriction on appointment. The above restrictions apply also to those in regulatory positions, policy roles or financial supervisors. Also subjected to restrictions are senators, members of parliament or provincial legislators and those who provide goods or services to member companies, or the spouses of such persons.

In addition it is required that independent directors shall be known and respected on a regional or national basis and be persons with significant experience in public and consumer affairs and representative of the Canadian population and include gender, linguistic, minority and geographic representation.

There is also a further safeguard. In the case of an independent director, the Board may by resolution of two-thirds of the directors present at a meeting, determine that a director no longer meets the necessary qualifications for directorship and may vacate that directorship.

The powers of the Board include:

- (a) appointing the officers of OLHI;
- (b) providing the officers with such guidance as may be required;
- (c) approving the budget of OLHI as well as its business plan;
- (d) reviewing OLHI's financial statements;
- (e) ensuring that OLHI adopts policies and procedures for the handling of consumers' inquiries and complaints which are consistent with Financial Services OmbudsNetwork standards;
- (f) ensuring periodic third party reviews are held to ensure compliance by OLHI with the OmbudsNetwork standards;

- (g) authorizing OLHI to enter into a funding agreement with Canadian Life and Health Insurance Association and to allocate its costs among its member companies in accordance with the funding agreement; and
- (h) ensuring that appropriate funding arrangements are in place at all times.

There then follows a series of prohibitions which are of such importance that I will reproduce them in full:

48. *Neither the Board nor any Director shall:*

- (a) *consider appeals of recommendations made by OLHI or its members to financial consumers;*
- (b) *seek the identity of a financial consumer that has made an inquiry or a complaint to OLHI;*
- (c) *seek to obtain information or materials relating to any inquiry or complaint to OLHI;*
- (d) *make any representation relating to any inquiry or complaint to OLHI; or*
- (e) *act on any information received, either directly or indirectly, that reveals the identity of a financial consumer or on any information or materials as described in subparagraphs (b) and (c) herein;*

except that an officer or employee may advise a financial consumer about the Board's limitations described in paragraph b.

Section 53 says:

53. The Board shall appoint an Independent Directors' Committee, composed of all the Independent Directors of OLHI. The Chair of the Board shall act as chair of the Independent Directors' Committee. The duties of the Independent Directors' Committee shall include, among other duties assigned by the Board from time to time, the review of appropriate candidates for appointment as Independent Directors for recommendation to the Members.

The excerpts from the By-Laws to which I have referred are all directed to ensuring the independence of OLHI in all its dealings with consumers.

An OmbudService Company such as OLHI must be independent, and also perceived to be independent from those who brought it into being. The

independence of which I speak is crucial to the operational role of the conduct of its core business, which in this case, is the provision of neutral and unbiased modes of alternative dispute resolution. I have concluded that the system which has been put in place by the By-Laws provides the high degree of independence which is required, by having checks and balances applying to the selection of directors and also to operational requirements.

The member corporations provide funding to enable OLHI to carry out its functions, but the member corporations do not control the Board of Directors although they have representatives on the Board. The independent directors if they so wish could control any decision of the Board, but that does not happen because OLHI functions cooperatively. No Board member knows or is allowed to know anything about individual dispute resolution matters which come to OLHI. Not being in possession of any such knowledge they cannot and do not influence any dispute resolution activities or recommendations. The Board of OLHI is and has always been made up of outstanding members, both independent and industry nominated and I know of no factional issues ever having arisen in its deliberations.

An ombud service must be funded by either public or corporate funds. The OLHI system requires the funding Members to cede operational control entirely to OLHI. In that way it mirrors the court system where federal and provincial governments' fund the courts, but have no control over judges' decision making.

I have never heard any suggestion that Canadian citizens believe that governments influence our courts. In fact Canada's courts are nationally and internationally recognized as being totally independent. Ombud services exist throughout Canada often funded by governments, but their sources of funding should never influence their operational activities. It is recognized now and was recognized in 2002 when OLHI was founded, that it had to be both independent and perceived to be independent. I believe that its structures ensure that the independence requirement is being met.

In close questioning of persons employed by OLHI, I have not heard any suggestion that there has been interference with their work by any member of the industry. In fact when I asked directly, do you feel that you are independent in performing your functions, the answer was an unequivocal yes, in all cases. I am convinced that OLHI is independent under its present system of governance and operation and that it functions independently and in a cohesive and collaborative manner and that its present method of selecting directors should not be changed.

8. PREVIOUS EXTERNAL REVIEW

Although OLHI was formed in 2002, its early organization of services to consumers had yet to be developed. Counsellors who were involved in those early days told me that their instructions were very general, “we were asked to do the best we could for the consumers who complained to us.” I do not recount the foregoing as a criticism. It was a new endeavour, both for OLHI and the industry. It required specialized organizational skills and advice as to how this new concept could be effectively organized as a provider of dispute resolution services.

Two events occurred after 2007. The first was the appointment of an Executive Director who was an experienced lawyer with corporate and litigation experience. She had had no prior working connection with the insurance industry. The latter fact was of great importance because although OLHI needed some staff members to have knowledge and experience of the insurance industry, it was and is important that its leadership and senior staff are independent of the industry and seen to be so.

The second important event was the first review held in 2008, by an independent reviewer, knowledgeable in alternate dispute resolution. What was required was a set of recommendations for the development of a professional organization which would be able to provide alternate dispute resolution under its Framework and By-Laws. The Independent Reviewer in due course presented a report containing 60 recommendations. The report was a comprehensive document which essentially suggested ways to make OLHI an effective dispute resolution organization. The various recommendations were categorized as follows:

1. Independence – 18 recommendations
2. Accessibility and Awareness – 9 recommendations
3. Scope of services – 2 recommendations
4. Fairness – 2 recommendations
5. Methods and Remedies – 23 recommendations
6. Accountability and Transparency – 2 recommendations
7. Other – 4 recommendations

Total 60 recommendations.

It is not necessary for me to specifically review all of the recommendations, because the Executive Director has provided me with a detailed summary of the implementation status of the 2008 review, which is attached to this report as Appendix “A”. The Board of Directors, the Executive Director and managerial

staff have in the past three years implemented, or are in the course of implementing, all but four of these recommendations.

I particularly endorse recommendation 34 which says:

make optimal use of the dispute resolution methods that are available,

And recommendation 46 which says:

Ensure that the process for referring cases to the Senior Adjudicative Officer(s) is:

- *Clarified in the procedures manual;*
- *Communicated through the website, brochures and other channels;*
- *Included as a topic in the training program offered to all staff.*

I will discuss later the use of the Senior Adjudicative Officer(s) as being of extreme importance in OLHI's delivery of service.

Recommendations 54 and 55, Accountability and Transparency, involve working with stakeholders and with regulators so that they are periodically informed of OLHI service capabilities.

Another recommendation I would particularly endorse is recommendation 56:

Commission an independent in-depth Consumer Feedback Survey after any changes in policies and procedures emanating from this Review are implemented.

I am aware that the Executive Director is working on this recommendation and I suggest that an ongoing consumer feedback might be achieved by asking those who have used OLHI's services to respond to a short inquiry, three or four months after closure of the file.

There is only one recommendation with which I am not in agreement and it is recommendation No. 1 of the 2008 Report:

Reconsider the appropriateness of the current mechanism for appointing Directors to OLHI's Board of Directors and the voting structures in the current By-laws, so as to bring OLHI's process into alignment with OBSI and GIO.

OBSI is the Ombudsman for Banking and Investments and GIO is the General Insurance OmbudService.

The difference between OLHI's governance structure and those of the other two services is as follows:

- (a) OLHI's independent directors committee, which are always a majority of the Board, provide to the annual meeting of the members, a roster of possible candidates for the one or more Board positions which are to be filled. The members then vote to select a Board member or members from the names provided by the committee of independent members.
- (b) In the case of OBSI and GIO, I understand that the Boards themselves fill vacant Board positions, without reference to any external group or umbrella body.

In my opinion it is unwise for Boards to be able to fill their own vacancies without external involvement. That could be especially important in the case of OLHI's Board which is made up of industry members, as well as independent members. If there were no checks and balances, the independent members could replicate themselves at will from among like minded persons of their own choosing. That process could in a few years result in a divided or dysfunctional Board. With the check and balance of OLHI Members voting from a roster of candidates put forward by the independent Board members, it is unlikely that a divided Board will result, and in fact it has not.

The present method for selecting Board members as prescribed by the By-Laws has worked well. The Board is comprised of eminent and widely experienced persons with diverse backgrounds. I believe that the Board is fully functional and unified, and I believe that its selection process should not be changed and I so recommend.

9. SUBJECTS WHICH REQUIRE INDUSTRY COLLABORATION

Over the past year, OLHI's Executive Director and a committee of the Canadian Life and Health Insurance Association Inc. have met regularly to discuss a number of the 2008 Review Recommendations which impact on the industry.

Recommendation No. 20

Require insurance companies to advise consumers of OLHI's services and contact information at three points of time: (1) when the policy is originally sent to the consumer; (2) when the consumer initially complains to the insurer; and (3) when the letter of denial is sent (as is done currently).

The industry agreed with recommendations (2) and (3), that the focus should be on the second point of time, i.e. when a consumer complains to the insurer. It was also agreed that an OLHI brochure should be sent to the consumer at the third stage, i.e. if the company's own ombuds procedure has not been able to resolve the complaint.

I see no reason to send OLHI information to the consumer when the policy is first sent to him or her. To do so may create a presumption that there will be a dispute. The vast majority of insurance policies do not result in disputes. I think the proper time to give information about OLHI, is when a complaint has been made and there is a real possibility of a dispute. In any event, the complainant must first go through the insurer company's own ombuds process and only if that fails, can OLHI become involved. To refer to OLHI with policy holders as soon as a policy is issued, could cause consumers to believe that OLHI, not the insurer, is the entity to which first complaints should be made.

Recommendation No. 26

Negotiate with member companies with a view to reserving the term "Ombuds" for OLHI and re-titling company Ombuds, to Consumer Complaints Officer.

There was no support for that recommendation nor for a similar recommendation in an independent review of a sister company to OLHI. In that case also there was no support for the recommendation. In my view the recommendation is not of such importance as to become an issue.

10. INDEPENDENT AGENTS

Recommendation No. 28

Consider ways in which OLHI's jurisdiction to address complaints involving independent agents could be confirmed.

In my opinion, the issue of complaints against independent agents is a serious problem, but not a problem which OLHI can solve. At most it may be able to help other stakeholders arrive at a solution. Independent agents are not required to be members of a third party dispute resolution mechanism. As industry representatives explained their positions to me, if an agent is exclusively selling their insurance products, they will treat a complaint much as they would if one of their own employees had sold the policy.

If however an agent has no special relationship with the insurer and is selling the products of a range of insurers, a company will not usually become involved in a complaint against the agent. In order for OLHI to be involved, its mandate would have to be changed. Everyone to whom I have spoken agreed that consumers at times have legitimate complaints against independent agents, and everyone to whom I have spoken also agreed that there is a gap in the process, insofar as concerns obtaining compensation from independent agents who become the objects of justified complaints.

Independent agents are subject to Regulators who are able to impose sanctions as a result of inappropriate actions, but they have no power to award compensation to aggrieved complainants.

As a result of Recommendation No. 28 the issue of the independent agents was explored by OLHI and the Insurers. All agree that there is a gap, but there are challenges to attempting a voluntary solution which does not also involve the agents. OLHI's Terms of Reference provide that participants in its processes are Members of OLHI, i.e. insurance companies, unless there is a written agreement allowing a third party to participate. In the case of a voluntary approach, agents who feel that they may be culpable could refuse to participate. If a member's signature is also required, member companies could become involved in a dispute which was not of their making. The unintended result could be to expand OLHI's mandate beyond its Terms of Reference.

At the end of the industry consultations, it was agreed that some steps may be available to better manage consumer expectations. Insurers could refer to OLHI in their final position letters to the consumer and include the OLHI brochure. The brochure could also be amended to explain that OLHI may decline complaints in certain limited circumstances. Insurers may also direct certain complaints against agents, to the Regulators. Secondly, when OLHI seeks additional information from an insurer, the insurer should provide information as to the agent's relationship to the company. Such information could give OLHI a better understanding of the company/agent relationship and help it in its assessment of the case and whether or not it can become involved.

After discussing the problem of the independent agents with OLHI, Regulators and insurance industry representatives, I have concluded that it is not a problem which is within OLHI's capacity to solve. I believe that the problem of what is described as "the gap" in the ombud service would be best addressed by the insurance industry, the Regulators and the independent agents. It would be unwise for me to make a recommendation on a matter which is outside OLHI's mandate, but I do suggest that a committee representing the Regulators, the industry and the independent agents may be able to find a solution.

Recommendation No. 31

With respect to complaints under review, require member insurance companies to disclose their complete file (except privileged information) upon the request of an OmbudService Officer, the Executive Director or a Senior Adjudicative Officer.

I agree with that recommendation. The issue of relevance came up in connection with the concept of providing “relevant non-privileged information” with an explanation as to why any information could not be produced. In any such discussion between OLHI and an insurer, “relevant” should be considered as whatever the insurer considered in reaching its decision. I agree that privileged information should not be produced, but I am uncomfortable with the insurer deciding the issue of relevance. In my experience when a file is required to be produced in the course of a proceeding, it is produced. The decision as to relevance should be made by the entity for which or whom it is produced, in this case OLHI. A confidentiality agreement could cover any material believed by an insurer to be irrelevant or confidential. I therefore endorse recommendation No. 31.

Recommendation No. 37

Initiate the complaint handling process if the insurance company has not provided a final response within 60 days of the date that the consumer submits a written complaint to the member company and any further material information or documentation that may be reasonably required by the insurance company. Permit OLHI to extend this time limit in exceptional circumstances in accordance with established guidelines.

It was agreed in discussions that the time frame should be 90 days rather than 60 days and that notice to consumers’ vis-à-vis the increased time frame should be included in the insurer’s acknowledgment letter, to be sent at the time that the complaint becomes an escalated complaint. The trigger point for the above actions would be the consumer complaint to OLHI. These matters as agreed, require no comment from me.

Recommendation No. 38

Establish benchmarks for the receipt of responses and other information from consumers and member companies, publish those benchmarks, and create a mechanism for monitoring them.

It was agreed that the appropriate timeframe would be:

- 30 days to provide information (e.g. all relevant file information);

- 45 days to respond to OLHI recommendations;
- The first timeframe will apply equally to consumers and member companies.

Recommendation No. 39

Establish internal benchmarks for timelines (including the completion of typical steps in the information and complaint handling processes, and an overall completion period) publish those benchmarks, and create a mechanism for reviewing cases that fall outside the benchmarks.

It was agreed that the resolution benchmark will be the closing 80% of complaints within 120 days.

Recommendation No. 41

Obtain a signature on behalf of member insurance companies to the provisions contained in the redrafted Authorization and Agreement for OLHI Dispute Resolution Service Form.

The above matter came under consideration and the document in question has been refined. Two presentation forms were explored, including a “plain language” approach. I strongly concur with a plain language approach, and I understand that a plain language document has been agreed upon and is now being used. Consumers often have difficulty in understanding insurance policies and other documents in specialized fields. Considerable progress has been made in recent years in simplifying documents to make them more intelligible to the general public. I strongly believe in that approach and recommend it to OLHI and the insurers as something to work towards.

Recommendation No. 44

Ensure that, where permissible at law, consumers and member companies indicate in writing their agreement to suspend any and all relevant limitation periods until OLHI has completed its dispute resolution activities.

All companies have signed, or agreed to sign, the form to suspend limitation periods. Member concerns have been addressed by developing target timeframes for both members and consumers to send information to OLHI and OLHI also has target dates for completing files. My understanding is that the suspension of limitation periods does not apply in the Province of Quebec where limitation periods must run without interruption. Where permissible the suspension of limitation periods while alternate dispute resolution is ongoing, is desirable.

In Canada the courts are the final arbiters of disputes. Limitation periods apply throughout the country. It is important that they not continue to operate, unless mandated to do so by legislation, while the parties are attempting with the help of impartial mediators to resolve disputes in a more cost effective manner. If all else fails, consumers should retain their right to the judicial process if they choose to use it.

11. PUBLIC DISCLOSURE

Recommendation No. 53

Develop and publish a Protocol on the subject of public disclosure of the names of member companies that do not cooperate with OLHI in an inquiry or investigation within a reasonable time or do not follow a recommendation within a reasonable time, ensure that any public disclosure preserve the confidentiality of the consumer; and amend the Terms of Reference to reflect the terms of the Protocol.

OLHI's Terms of Reference clearly state that if a member is uncooperative in an investigation or does not follow a non-binding recommendation of a Senior Adjudicative Officer, that the Officer's reasons and non-binding recommendation must be published. Over the past four years, OLHI has had six non-binding recommendations, some favouring the complainant and some the insurer. All have been followed by the member companies, and thus there has been no need for publication. I do believe there should be a protocol vis-à-vis publication of a Senior Adjudicative Officer's non-binding recommendation. I believe also that the requirement to publish such a recommendation is a vital component of OLHI's mandate.

It has been agreed in discussions between OLHI and the Members' Committee that OLHI will publish on its website the whole of a Senior Adjudicative Officer's report and non-binding recommendation, to ensure transparency and clarity. Confidential consumer information would of course be redacted. I would add that without the right to publish as referred to above, OLHI's role would be drastically curtailed if and when a Member refused to comply with a non-binding recommendation.

Recommendation No. 57.

Engage in discussions with member companies and CLHIA to set standards for the roles and responsibilities of the companies' internal Ombuds or Customer Complaints Officers.

N.B. CLHIA (Canadian Life and Health Insurance Association) is the Association of Member Companies.

In discussion the above companies noted that they have a statutory responsibility to have an Ombuds person and a protocol. Beyond that, members felt that insurers should have flexibility as to how they establish their systems, unless there is a problem that needs addressing.

I agree with that position. I see the matter as being outside OLHI's purview. What OLHI requires is the full cooperation of the member companies in providing it with the files and other information which it requires in the exercise of its mandate.

The previous external review provided positive assistance to the development of a working regime for OLHI. To a large degree it meshed with the work of the Executive Director and managerial staff. For the past three years OLHI's Executive Director, managers and staff members, as well as the Board of Directors, have worked very hard, internally and with Regulators and the industry, to organize its work effectively. In my opinion, OLHI is now functioning more effectively.

It follows that my principal focus and that of OLHI should at this time become the improvement of OLHI's core processes, i.e. mediating and resolving complaints made by consumers against Member insurance companies. The other priority must always be the identification and correction of systemic problems within the industry and preserving OLHI's independence.

I have concluded that with hard work, and the help of the recommendations from the previous external review, OLHI has instituted most of the mechanisms necessary for its successful operation. The principal focus of this review should be to discuss and recommend a strengthened use of the tools which OLHI already has at its disposal.

12. INTERNAL INTERVIEWS AND REVIEW OF FILES, TORONTO AND MONTREAL

In the course of this review, I have read a large number of background documents on the history of OLHI. I have interviewed almost all persons working in the Toronto and Montreal offices. I have reviewed approximately 10% of the complaint files which have been opened and closed in both offices from January 1 to mid-July, 2012.

In August I met with a significant number of industry representatives, including those directly involved with company ombud services, and discussed their interactions with OLHI. I also met with and spoke to Regulators both in person and by telephone, and I met with the Chair of OLHI's Board of Directors. Telephone conversations with key personnel have continued throughout, as well as meetings with the Chair of the Standards Committee of the Board and the Executive Director in St. John's in early October.

13. INFORMATION SERVICES

I feel it is important to mention the foregoing interactions because from them I have come to a number of conclusions. Firstly I should say that I am satisfied that OLHI is succeeding in carrying out its mandate. In the past year it received over 31,000 requests for information about the Insurance Industry and its products, thus OLHI is providing a valuable service to consumers, potential consumers and the public generally.

Two points should be made vis-à-vis information. First, in describing life and health products on the telephone, OLHI's information counsellors must not recommend the products of a specific member company. Neither should they direct an enquirer to a specific company. The information provided is therefore both general and specific, but not company specific.

Secondly, the volume of telephone inquiries is declining, while the number of website visits is increasing. It has become clear that with ever increasing computer literacy, more people are finding their information about insurance products online. At this time there is still a need for counsellors to provide this service by phone, but as more people use the internet and automated telephone services, the need for telephone assistance may disappear or be largely reduced in the future.

Complaints are separate and are made verbally or in writing, to complaints counsellors to ask for help, advice and assistance in resolving the complaint. If a counsellor can resolve the complaint over the phone he or she will do so. If not, the complainant will be asked to provide OLHI's authorization and agreement form, which when signed and returned, will enable a more detailed review of the complaint to proceed. It is noteworthy that most files are dealt with and closed at the complaint counsellor level.

14. COMPLAINT SERVICES

For a concise account of how the complaint process begins and progresses, I will quote from a description provided to me by OLHI's General Manager:

Upon receipt of appropriate authorization from all parties, the consumer's complaint documents as well as the insurer's complaint related documents, the Complaint Counsellor will review the information and determine whether they feel there are grounds upon which we can negotiate the complaint further with both parties. If the Complaint Counsellor feels there are grounds to negotiate, then they will recommend escalating the complaint to our next complaint review process stage which is a review by an OSO (OmbudService Officer). Alternatively, if the Complaint Counsellor does not believe there are sufficient grounds for further negotiation, they will recommend the complaint be closed and that an outcome review letter be sent to the consumer explaining the results of our review.

Regardless of the recommendation being made, the Complaint Counsellor will then review the complaint and their recommendation with another Complaint Counsellor. This is referred to in our process as the Peer Review.

Once both Complaint Counsellors have come to an agreement on what they recommend as next steps (escalate to OSO or close), the complaint and the recommendation is then reviewed by the Manager. If the Complaint Counsellor is recommending an escalation to the OSO, they will communicate with the manager and request a review and discussion. However, if the recommendation is to close the complaint, then the Complaint Counsellor will prepare a draft letter to the consumer prior to discussing the complaint with the manager.

The manager will review the complaint file and discuss the file with the Complaint Counsellor. If the manager agrees the complaint should be closed, then the outcome review letter to the consumer will be reviewed, finalized and approved by the manager prior to having the Complaint Counsellor send it to the consumer. If the manager agrees the complaint

should be escalated to an OSO, the manager will then review the request with the Executive Director who must approve all complaint escalations beyond our initial complaint process stage.

The Peer Review is an important step in our process as it ensures that the recommendations being made are not based solely on one individual opinion or assessment of the facts. It allows for an open exchange of information, for a different perspective hence more thorough review and consideration of the facts, an ability to ensure we fully utilize the individual expertise each member of the team has to offer and an opportunity to share ideas and best practices amongst the Complaint Counsellors. This process has been in place for just over a year now and although I believe there are ways to make the Peer Review process more effective, they have led to a greater sense of team, more exposure to a variety of complaints for our Counsellors and more consistency in the way we review our complaints overall.

The management review is also an important step. Ensuring one person within the company reviews all of our complaints and written communication provides us with the ability to provide consistency in the way we manage our complaints as well as consistency in our outgoing communications. In addition, it allows us to quickly identify similar or related complaints, any new trends and possible systemic issues. Identifying these types of complaints can then allow us to take a more proactive approach to ensure the complaints are handled in the most efficient and effective way to continue to ensure consistent delivery of our services.

In addition to the points indicated above, the involvement of management in all of our complaints processes on a regular basis also provides us with regular insight on how our processes can be improved. It allows for regular review of our current and ongoing complaint volumes giving us the flexibility to reassign complaints and/or make scheduling changes to ensure we are adhering to our established service benchmark and meeting or exceeding the expectations of our consumers and insurers.

15. OMBUDSERVICE OFFICER

An OmbudService Officer makes every available effort to resolve the dispute and achieve a mutually acceptable solution after factual input and argument from both the complainant and the insurer. If the OmbudService Officer cannot resolve the complaint and there is a basis for pursuing it to the Senior Adjudicative Officer stage for a more comprehensive investigation and review, the Executive Director may authorize that step after full internal consultation.

After the foregoing intensive process the Senior Adjudicative Officer will seek information and hear argument from both sides, and will write a comprehensive report with a nonbinding recommendation as to how the complaint should be resolved. The non-binding recommendation may favour the position of either the complainant or the insurance company.

The Executive Director guides the entire process from the Complaints Counsellor, up to the OmbudService Officer and on to the Senior Adjudicative Officer when appropriate. She will request team meetings at her discretion and will make a decision as to whether or not there are grounds for proceeding to the final stage which is a non-binding written recommendation. If a non-binding recommendation is made by the Senior Adjudicative Officer and not accepted and acted upon by the insurer, the written report and recommendation will be published on OLHI's website. I note that so far in OLHI's operational history, publication has never been necessary, because non-binding recommendations have been accepted and acted upon by the insurer when they have been in favour of the consumer. Non-binding recommendations which favour the insurer, have not been published. I will recommend that consideration should be given to publishing these also.

16. ANNUAL REPORT

Lastly, OLHI is required to prepare an annual report and other reports containing statistics, case studies of complaints (with personal identifiers removed) for educational purposes, and other information that the Board of Directors may approve as appropriate for interested parties and the general public.

On a reading of the General Manager's description of the complaint process and how complaints are addressed, I have no hesitation in endorsing the process. I do however have a concern that too few complaints are being raised to the OmbudService Officers for a more thorough review and recommendations. I have reviewed the work of these officers and in my opinion it is thorough and impressive.

17. COMPLAINT SOURCES

In my review of files, I note that though there were files from every part of Canada, 84.7% of the total complaints were from Ontario and Quebec. There is every reason to believe that the percentage of files from other provinces will increase, but Ontario and Quebec together will always have the greater percentage of complaints because together they represent more than 60% of Canada's population. As OLHI's services become better known the demand for its services will increase. That trend is expected to continue and the total complaints received in the fiscal year just ended totaled 2444, a 22.9% increase over the previous year.

18. INDUSTRY RELATIONS

I have also concluded that OLHI's relations with member insurance companies are positive, cooperative and non-confrontational. That is extremely important because the relationship between OLHI and the Industry is voluntary on industry's part. There would be nothing more damaging to OLHI than the withdrawal of an industry member, because it would indicate a lack of confidence. If members lack confidence, one could hardly expect consumers to have confidence. Thus far no company had withdrawn from OLHI membership, unless it has ceased to do business or for reasons unrelated to OLHI.

I note also that I have not received any unfavourable comments on OLHI's work from Regulators. However they wish to know more about consumer opinions of OLHI's services. Regulators are fully aware of the gap which involves the absence of independent insurance agents from the ombud service process. As I have discussed earlier, OLHI cannot of itself solve that problem and the impetus for a solution must come from the industry and Regulators. The views of the independent agents should also be sought. OLHI may be able to assist in finding a solution but it cannot take the lead in that process, mainly because it would be outside its mandate and I suspect may not belong in its mandate.

From my vantage point I believe that OLHI is an effectively functioning ombud service for the Life and Health Insurance Industry. In large part the recommendations of the previous reviewer have been implemented. OLHI has had a ten year life but in my opinion only about a five year life as a developing and more sophisticated ombud service. For me the principal question is, how can OLHI's core ombud services be improved.

19. ESCALATING COMPLAINTS

I must not refer to any particular file, but after reviewing 104 files I have concluded that a dozen or more could have been raised to the OmbudService Officer level, for more in-depth inquiry and analysis.

- The founding documents raise two matters which are worthy of discussion:
- (a) that OLHI's focus should not be too legalistic, and
 - (b) that OLHI's focus should be on fairness between the complainant and the insurer.

20. LEGAL INTERPRETATIONS

It is notable that the insurer's responses to complaints are often legalistic. Insurers refer to the contract of insurance, i.e. the policy, and take the position that the terms of the policy as they interpret it cannot allow the complaint to go further. If in OLHI's view a particular clause in a policy allows for a different interpretation, then it should be prepared to present its point of view and argue for it. That happened in a recent complaint which went from the Complaint Counsellor stage to the OmbudService Officer stage and ultimately to the Senior Adjudicative Officer stage.

After a review of the policy and after hearing extensive argument, the Senior Adjudicative Officer wrote a closely reasoned and comprehensive non-binding recommendation, which disagreed with the insurer's interpretation and agreed with that of the complainant.

In my view that is an example of how the process should work. I would say the same, whichever side the non-binding recommendation favoured. The interpretations of either the complainant or the insurer should be challenged when there is doubt as to their correctness. Such challenges should be dealt with at the OmbudService Officer and the Senior Adjudicative Officer levels. In fact, if the OmbudService Officer's recommendation, after extensive peer and managerial review favours the complainant's interpretation, or if a recommendation is based on fairness to the consumer and is not accepted by the insurer, there is a strong argument that the matter should automatically be raised to the level of the Senior Adjudicative Officer. I suggest that that option be explored.

21. FAIRNESS

“Fairness” is part of OLHI’s mandate. In my review, I found a number of cases which I felt might have been unfair to the complainant by not being raised to the OmbudService Officer level.

For example, travel insurance may be purchased and the premium paid, but there is no underwriting process at that time. If there is no call upon the travel insurance, it expires at the end of the specified period and that is the end of the transaction. If on the other hand, there is a claim, the insurer closely examines all of the circumstances to determine whether or not the claimant’s factual disclosures at the time of the application were correct. In medical claims, that examination focuses very much on pre-existing health issues. It is easy for an applicant unfamiliar with travel insurance to miss the significance of some health fact in his or her past which could be called into question after a claim has been made.

Even when an applicant has consulted with his or her family doctor and been assured that all is well, there may have been latent problems which were not significant to either the doctor or the patient. When such claims are being analyzed by an insurer, it usually engages the services of a medical specialist whose expertise may place the opinions of the family doctor, and thus the complainant, at a disadvantage. That can happen even though the claimant has acted in good faith throughout.

I use the foregoing hypothetical example to illustrate that fairness can become a very real issue for an ombud service whose mandate is to seek the fair resolution of a disputed claim.

Fairness issues can also arise when a consumer has purchased a policy such as a Universal Life Insurance policy, which has an investment component. Applicants may sign documents though they have little or no understanding of the financial risks, the possible premium escalations, or even the possible tax consequences, which may be inherent in the policy. Unpleasant surprises may arise later for the insured, bringing with them issues of fairness arising from the transaction.

The reality is that the insurer has the benefit throughout of product knowledge, together with thorough financial, legal, accounting and tax advice.

Consumers of insurance products range from highly sophisticated investors to functionally illiterate persons. Otherwise well educated persons may nevertheless be lacking in knowledge of financial insurance products.

The pursuit of fairness in complaint resolution may require OLHI, as well as the Insurer, to have access to specific legal, medical, financial and other advice. All of the foregoing are readily available to the insurer, but not always to the complainant and not to OLHI as matters now stand. One of the needs as related to me by some of the frontline counsellors at OLHI is that they wished that they had available to them the right to consult legal, medical and financial professionals in cases when they need such advice.

22. SPECIALIZED ADVICE

What OLHI needs is additional funding for access to specialized legal, medical and financial advice, and perhaps at times the advice of other specialists. Complainants can rarely supply OLHI with the specialized advice that it needs in order to make the playing field more level between the consumer and the insurer.

I will therefore be recommending that funding be provided for such advice for Counsellors, OmbudService Officers, and Senior Adjudicative Officers when in the opinion of the Executive Director, after internal consultation, she considers such advice to be necessary in order to achieve a greater level of fairness between complainants and insurers.

I believe also that an increased number of cases should be escalated to the level of OmbudService Officer and receive a more extensive investigation and review, with access to specialist advice when necessary.

I wish also to emphasize that the role of the Senior Adjudicative Officer is of the highest importance and should be used more extensively, and that the guidance of that Officer through the non-binding recommendation process should be available to all levels of OLHI by their having access to OSO and SAO written reasons.

The Senior Adjudicative Officer's role allows for intensive investigation, fact finding and the receipt of facts and argument from both sides. The position should always be filled by persons with either judicial experience or a high level of training, background and experience in legal and alternate dispute resolution. Whichever the qualification, these Officers should have a high level of professional independence and not be staff members of OLHI, but be engaged on a fee for service basis when they are needed.

Since OLHI has been in existence there have only been six references to a Senior Adjudicative Officer. An increase in the number of such references would

increase OLHI's effectiveness and stature as a provider of dispute resolution services.

At the moment there is only one Senior Adjudicative Officer who resides in Montreal since the passing of the retired Justice who occupied that role in Toronto. I will be recommending that a replacement be found within such a timeframe as may be necessary.

The Senior Adjudicative Officer is at the apex of OLHI's processes. It is that person who has the highest level of demonstrated experience and authority. His or her role is to investigate and review matters in a most thorough manner, and if necessary receive evidence from both sides, as well as argument. It does not matter whom the recommendation ultimately favours, OLHI's role is to be impartial. What does matter is that the Senior Adjudicative Officer's non-binding recommendations carry great persuasive value.

There is another aspect of OLHI's nonbinding recommendations which calls for careful consideration. The founding documents say that there should be no precedents attached to OLHI's recommendations. As I interpret that requirement it must mean that there should be no binding precedents. Nevertheless, access to these non-binding precedents would give OLHI staff and the industry the benefit of the learning experience which these recommendations are able to provide.

Furthermore Complaint Counsellors should always have the benefit of being able to read each other's recommendations and the recommendations from the more senior levels. Otherwise, except for what may be learned in peer review, the Counsellors and OmbudService Officers would be compartmentalized and without the advantage of each other's thinking and wisdom at every stage of the dispute resolution process.

I also believe that other uninvolved Member companies may benefit from reading a Senior Adjudicative Officer's written non-binding recommendations, which could be distributed to the industry, with personal and corporate identifiers being redacted. I will not make a formal recommendation on this issue but rather I suggest it as a point for discussion between OLHI and Member companies.

I note that OLHI's Annual Report publishes some redacted accounts of particular matters which it has dealt with during the preceding year. I think that is an excellent approach. I also think that a way should be found to publish more of those redacted summaries. Consumers should know more of OLHI's recommendations, both those in favour of the consumer and those in favour of the

Member company. I recommend that ways should be explored to make such summaries more available to consumers and the general public.

Increased consumer knowledge of OLHI's work will over time demonstrate OLHI's independence, more than anything else. The example of the courts is helpful. Canadian courts are highly regarded at home and abroad for the quality of their work and their independence. One never hears their independence questioned, because every day the courts demonstrate their independence in their decisions, which are available to all.

OLHI is not a court, but if ways can be found to demonstrate its independence and impartiality, it will be noted as time passes, both by consumers and the public at large. Demonstrated independence and impartiality in non-binding recommendations are the surest way to achieve the respect of the consumer, the public, Regulators and the Industry. I suggest that initiatives be undertaken to facilitate more extensive publication of redacted recommendations, particularly those of Senior Adjudicative Officers and OmbudService Officers.

OLHI has in the past four years developed its processes to the level of fulfilling its mandate as prescribed by its founding documents. I believe that Recommendations 7, 8, 9 and 10 in particular, could help OLHI reach its full potential.

OLHI is required to be independent, fair and impartial as between complainants and insurers. These requirements can best be demonstrated by comprehensive written reasons in support of its non binding recommendations.

23. LIST OF RECOMMENDATIONS

- 1) That the present method of selecting directors should not be changed. p. 14
- 2) That a committee representing Regulators, the Industry and Independent Agents be set up to find a solution to the IA gap in the dispute resolution process. p. 19
- 3) That strong support for “plain language” in all documentation should continue. p. 21
- 4) That the principal focus of this review is to discuss and recommend a strengthened use of the tools which OLHI has at its disposal. p. 23
- 5) That consideration should be given to publishing non-binding recommendations which favour the Insurer as well as those favouring the Claimant. p. 27
- 6) That the views of Independent Agents should be sought concerning their participation in an OmbudService process. p. 28
- 7) That if the OmbudService Officer’s recommendation favours the complainants’ position and is not accepted by the Insurer, OLHI should carefully consider escalating the matter to a Senior Adjudicative Officer, unless there is cogent reason for not doing so. In all cases the final decision to escalate or not rests with the Executive Director under the Terms of Reference. p. 29
- 8) That additional funding should be provided by Members so that OLHI can seek specialized professional advice when appropriate. p. 31
- 9) That a larger number of cases should be escalated to the OSO level to receive more extensive investigation and review. p. 31
- 10) That the services of the Senior Adjudicative Officer (SAO) should be used more extensively. p. 31
- 11) That a second SAO be found as soon as possible. p. 32
- 12) That a way be found to publish a greater number of case summaries. p. 32
- 13) That discussion take place between OLHI and Member companies to see if they would benefit from reading an SAO’s non-binding recommendations with personal and corporate identifiers being redacted. p. 32

24. ATTACHMENTS

Documents reviewed

- OLHI Annual Reports
- CLHIO (OLHI) Terms of Reference
- Company By-Laws
- FSON – A Framework for Collaboration (‘Framework Guidelines’)
- Report on Independent Review of CLHIO (OLHI) 2008
- OLHI’s Response to the first Independent Review
- OLHI Strategic Plans and updates, 2009 to 2012
- OLHI Executive Directors reports, June 2011 to June 2012
- Statistical reports
- 2010 Human Resources Report
- OLHI Human Resources Policies
- OLHI Training documents, October 2009 to January 2012
- OLHI Complaints Handling policies
- OLHI Complaints Handling Process charts
- OLHI Complaints Handling Handbook
- Correspondence with Member Companies re Process changes and Complaint Handling Reference documents 2011 & 2012
- Status of Completion of Recommendations
- Board of Directors Meeting Minutes and Committee Meeting Minutes

Stakeholders consulted

- Representatives from eight Member Companies
- Representatives from Canadian Life and Health Insurance Association (CLHIA), including the President
- Representatives from the Dispute Resolution Committee of the Joint Forum of Financial Market Regulators (DRC), including the Chair and Vice-Chair
- The Chair of OLHI
- The Chair of the Standards Committee of the OLHI Board
- OLHI Staff including all management staff, Complaints Counsellors, OmbudService Officers, and the Senior Adjudicative Officer
- A sample of Consumers

Case files reviewed

A total of 104 case files were reviewed, including complaint call files, written complaint files, investigation (OSO) files and adjudicative (SAO) files.

2008 INDEPENDENT REVIEW
STATUS OF COMPLETION OF RECOMMENDATIONS
(as at September 30, 2012)

2008 INDEPENDENT REVIEW -STATUS OF COMPLETION OF RECOMMENDATIONS

– As at September 30 2012

	GUIDELINES		NOTE:	“CLHIO” is now known as “OLHI”
#	Recommendation	Year	Status	Comments

	INDEPENDENCE			
1	Reconsider the appropriateness of the current mechanism for appointing Directors to CLHIO’s Board of Directors and the voting structure in the current By-Laws, so as to bring CLHIO’s processes into alignment with OBSI and GIO	Y1/ Y2/ Y3	Consideration Completed	Full consideration has been given to this recommendation through numerous meetings with the industry association and member company representatives over a 3 year period OLHI’s current By laws provide that Member Companies vote on a slate of Independent Directors that are solely selected by OLHI’s Committee of Independent Directors. There is no input from Member Companies or Industry Directors on the slate of Independent Directors. It is therefore not necessary to change the current process to preserve the Board’s independence
2	Bring CLHIO’s By-Laws and Board Committee structure into compliance with the Implementation Guidelines relating to Independence	Y2	Completed	OLHI complies with this guideline by i) ensuring its annual budget is approved on recommendation of the Independent Directors only; ii) the establishment of a Board Human Resources Committee since November 2010 to handle HR responsibilities
3	Explore opportunities for inclusion of a consumer representative on the Board of Directors	Y1	Completed	The President of Consumers Association of Canada has served as an Independent Director since March 4, 2010
4	Discuss the advantages and disadvantages of having a Chair of another OmbudService on CLHIO’s Board of Directors, and make a decision in relation to the current situation	Y1	Completed	The Board discussed this issue and decided to retain the GIO Chair as an Independent Director; in the event a specific conflict of interest arises the issue will be addressed in accordance with OLHI’s Conflict of Interest Policy for Directors and Officers which requires disclosure of real, potential and perceived conflicts of interest
5	Revisit CLHIO’s budget after the Board of Directors has considered this Report and taken into account the three-year strategic plan and supporting yearly operational plans required to implement the recommendations in the Report	Y1/ Y2/ Y3	Completed	All annual budgets since the 2009/10 fiscal year have taken into account initiatives required to implement the numerous recommendations in the 1 st Independent Review /Report

2008 INDEPENDENT REVIEW -STATUS OF COMPLETION OF RECOMMENDATIONS

– As at September 30 2012

	GUIDELINES		NOTE:	“CLHIO” is now known as “OLHI”
#	Recommendation	Year	Status	Comments
6	Require each member of the Board of Directors to sign, upon appointment and on a yearly basis thereafter, a Conflict of Interest and Confidentiality Policy which includes the obligation to act in the best interests of CLHIO	Y3	Completed	OLHI’s Board adopted a Conflict of Interest (COI) Policy for Directors and Officers during fiscal 2011/12. This policy expressly requires all Directors, including Industry Directors, to act in the best interests of OLHI. All Directors have signed the COI policy for the current fiscal year
7	Publish biographical statements of the members of the Board of Directors	Y1	Completed	The biographies of all Board members have been posted on OLHI’s Web sites since December, 2009
8	Appoint Officers that are full-time or part-time CLHIO employees	Y2	Completed	Fulfilled in November 2010 by retirement of former Corporate Secretary and appointment of new Corporate Secretary who is an OLHI employee
9	Ensure that CLHIO Officers are not employed by or otherwise associated with the CLHIA or an insurance company member	Y2	Completed	Fulfilled in November 2010 by retirement of former Corporate Secretary and appointment of new Corporate Secretary who is an OLHI employee; there are no other Officers who are employed by or otherwise associated with the CLHIA or an insurance company member
10	Require each Officer of CLHIO to sign, at the point of hire and yearly thereafter, a Conflict of Interest and Confidentiality Policy which includes the obligation to act in the best interests of CLHIO	Y3	Completed	Fulfilled by Board’s adoption of Conflict of Interest Policy for Officers and Directors during fiscal 2011/12. This policy expressly requires all Officers to act in the best interests of OLHI. All Officers have signed the COI policy for the current fiscal year
11	Publish a biographical statement for the Senior Adjudicative Officer(s)	Y1	Completed	Biographies of Senior Adjudicative Officers have been posted on OLHI’s Web sites since December, 2009
12	Require the Senior Adjudicative Officer(s) of CLHIO to sign a Conflict of Interest and Confidentiality Policy, at the point of retainer and yearly thereafter	Y3	Completed	Board approved Conflict of Interest (COI) policy for employees, consultants, and independent contractors, including Senior Adjudicative Officer (s), during fiscal 2011/12. The Senior Adjudicative Officer has signed a COI for the current fiscal year.

2008 INDEPENDENT REVIEW -STATUS OF COMPLETION OF RECOMMENDATIONS

– As at September 30 2012

	GUIDELINES		NOTE:	“CLHIO” is now known as “OLHI”
#	Recommendation	Year	Status	Comments
13	Require each member of staff (including independent contractors) and management of CLHIO to sign, at the point of hire or engagement and yearly thereafter, a Conflict of Interest and Confidentiality Policy which includes the obligation to act in the best interests of CLHIO	Y3	Completed	Board approved COI policy for employees, consultants, and independent contractors during fiscal 2011/12. Independent Contractors have signed COI for the current fiscal year.
14	Monitor for and investigate any inconsistencies in the approaches of staff or failures to follow prescribed procedures and address, as appropriate, any concerns	Y2	Completed	During fiscal 2010/11 OLHI implemented a standard company-wide complaints handling process and developed an audit process to identify any inconsistencies in staff approaches to complaints handling; Regular audits since that time have served to improve consistency in processes and to identify areas for improvement in complaints handling and servicing
15	Publish biographical statements for each of CLHIO’s staff and members of management	Y1	Completed	Biographies of the Executive Director and OLHI management staff have been posted on OLHI Web sites since December, 2009
16	Take responsibility for all aspects of the employer role for those who work for CLHIO	Y2	Completed	With the exception of payroll and benefits administration services and some administration services in OLHI’s Montreal office, which services are still provided by the industry association, CLHIA, all persons or entities providing services to OLHI are now directly employed by or contracted to OLHI and under OLHI’s supervision and control
17	Acquire in-house or independent external expertise in the areas of law; human resources; accounting, payroll, and benefits administration; and information technology	Y1/ Y2/ Y3	Completed	Legal services provided in house by OLHI’s Executive Director since June, 2008 when she assumed the additional responsibilities as “General Counsel” Accounting provided by internal corporate accountant since November, 2008 OLHI has had an independent service provider host its Web sites since August, 2009 OLHI’s IT network and email have been hosted jointly with OBSI since August, 2009 OLHI will host its own independent IT network and effective November 1, 2012 Since fiscal 2009/10 OLHI has provided all HR management services in house, with the

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				exception of employee payroll and benefits administration and annual salary surveys In fiscal 2010/11 the OLHI Board approved a plan to become independent from CLHIA in the areas of payroll and benefits administration. This has proved difficult to implement as a comparable employee benefit plan cannot be obtained from another provider due to the small number of OLHI full time employees.
18	Obtain office premises in Montreal that are not in the same building as either CLHIA or a member company	Y4	Completed	OLHI has leased premises separate from CLHIA, commencing April 2013, when its lease ends for the current Montreal office premises

	ACCESSIBILITY			
19	Engage the services of an independent organization to conduct a professional survey of the level of awareness about CLHIO		Not Completed	OLHI’s Board considered this recommendation in 2009 and concluded that, since awareness was evidently low, a survey wasn’t required to confirm this fact; Instead it was decided that OLHI should focus its resources on developing greater public awareness; in 2009 OLHI adopted a three year communications plan designed to increase public awareness. During the 3 year period since the plan was adopted, OLHI’s total contacts with the public have increased 52.9%
20	Require insurance companies to advise consumers of CLHIO’s services and contact information – at three points of time, namely When the policy is originally sent to the consumer; When the consumer initially complains to the insurer; When the letter of denial is sent (as is done currently)	Y2/Y3	Completed	OLHI negotiated this recommendation with industry which agreed that insurers would advise consumers of OLHI’s services when the consumer complains to the insurer, as well as when the letter denying the claim is sent; It was felt that it was not necessary to notify consumers about OLHI when the policy is sent to the consumer as this would i) create a presumption that there will be a dispute when the majority of insurance policies do not result in disputes, and ii) confuse the consumer by suggesting that OLHI, not the insurer, would be the entity to which complaints should first be made. OLHI’s Board accepted this approach at its June 2011 Board meeting and this change in notification procedure was implemented by Member Companies in January, 2012

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21	Promote greater awareness of CLHIO and its services by requesting that third party organizations provide information on OLHI’s services	Y1/ Y2/ Y3	Completed	OLHI’s Board of Directors adopted a 3 year communications plan in 2009 designed to promote greater awareness of OLHI’s services. During this 3 year period OLHI’s total contacts with the public have increased by 52.9%.
22	Explore technological means to embrace the link between key words and CLHIO’s website and consider other means of enhancing communication about CLHIO and its services	Y1/ Y2/ Y3	Completed	OLHI launched new English and French Web sites in August, 2009 which makes ongoing use of Search Engine Optimization techniques to link key words in internet searches with OLHI’s services
23	Consider the utility of advertising as a means of increasing awareness and encourage member companies to include information on CLHIO in advertising or other communications	Y1/ Y2/ Y3	Completed	OLHI’s 3 year communications plan adopts advertising through Web sites, distribution of consumer brochures, and attendance at trade and consumer shows as ongoing forms of advertising designed to improve increased public awareness of OLHI and its services; Effective January 2012, Member companies also agreed to distribute OLHI’s Consumer brochure to individuals whose complaints remain unresolved with their insurer
24	Canvas opportunities for spreading awareness through governmental, professional, and community organizations	Y1	Completed	OLHI’s 3 year communications plan identified the establishment of a Face book page, creation of Web links with community and governmental organizations, and distribution of its Consumer brochure through the Consumers Association of Canada and federal MPs and provincial MPPs and MLAs as opportunities for spreading awareness through other organizations that are intermediaries with consumers
25	Rename the Canadian Life and Health Insurance OmbudService to one that is more distinctive	Y1	Completed	Name change to OmbudService for Life & Health Insurance (OLHI) implemented August 2009
26	Negotiate with member companies with a view to reserving the term “Ombuds” for CLHIO and re-titling company Ombuds to “Consumer Complaints Officer”	Y2/Y3	Completed	OLHI negotiated this recommendation with industry and there was no support to adopt it; OLHI’s Board considered the industry’s position and was of the view that the term “Ombuds” or “Ombudsman” is commonly used within companies to describe their internal complaint resolution process and that it would not be

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				appropriate to reserve its use to OLHI; It was also noted that a similar recommendation made in OBSI's 1 st independent review was not adopted
27	Improve accessibility to CLHIO's services by: Allowing consumers to access CLHIO's complaint form and agreement and authorization form on line, if desired; Extending the hours of telephone service from 8:00am to 7:00 pm on Monday through Friday; Making arrangements to provide services to people with disabilities	Y1/Y2	Completed	Consumers have had on line access to OLHI's complaint form and "Authorization & Agreement for Dispute Resolution Services" since OLHI launched its new Web sites in August 2009 OLHI's complaint call volumes do not justify extending service hours; OLHI's service standards require that complaint calls, including messages left outside the working hours of 9AM to 5PM Eastern Time, be returned within 1 business day OLHI adopted TTY capability for its phone system for persons with hearing disabilities in 2010; OLHI's 2 physical offices are accessible to persons with physical disabilities

SCOPE OF SERVICES				
28	Consider ways in which CLHIO's jurisdiction to address complaints involving independent agents could be confirmed	Y2	Consideration Completed	OLHI discussed this issue with industry. It was agreed that i) OLHI has no direct mandate to deal with complaints against independent agents because its Terms of Reference limit participation in its process to insurance companies; and ii) There is no method to compel all independent agents to participate in OLHI's process. Nevertheless, OLHI's approach is to review all agent complaints involving life and health insurance products to determine if there are grounds to recommend that the insurer resolve the complaint in favor of the consumer. It was agreed that steps could be taken to better manage consumer's expectations regarding the handling of agent complaints. This has been achieved by an explanation of OLHI's role in its consumer brochure and in correspondence to the consumer
29	Develop a mechanism that allows for consultation with regulators, industry and consumers	Y3	Completed	In November 2011, OLHI's Board approved a 3 year stakeholder consultation plan identifying mechanisms and methods for regular consultation with each of its 4 major stakeholder groups, namely

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				regulators, industry and Member Companies, consumers and consumer organizations, and sister OmbudServices.
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	FAIRNESS			
30	Develop a clear fairness standard that is harmonized across the OmbudServices that comprise FSON and is approved by CLHIO’s Board of Directors	Y3	Completed	OLHI adopted a fairness standard for complaint handling which has been posted on OLHI’s Web sites since November 2011. It has not been possible to develop a fairness standard that is FSON-wide due to differing Terms of Reference for each OmbudService. It is noted that the Framework for Collaboration suggests that the fairness standard be harmonized only where possible
31	With respect to complaints under review, require member insurance companies to disclose their complete file (except privileged information) upon request	Y2/Y3	Completed	OLHI negotiated this issue with industry and it was agreed that insurers would disclose all non privileged information relevant to a consumer complaint; OLHI’s Board approved this approach at its June 2011 Board meeting and this change in procedure was implemented by Member Companies in January, 2012

	METHODS & REMEDIES			
32	Review the appropriateness of retaining the Consumer Assistance Centre (CAC) functions that are not closely connected to complaints	Y1/Y3	Completed	This recommendation was reviewed by the OLHI Board at its meetings held in June 2009 and March 2012; The consensus is that the information services provided by OLHI’s “Consumer Assistance Centre” are valuable to consumers as demonstrated by the annual 31,000 calls and 20,000 annual visits to OLHI’s Information Services Web pages. The information services function also assists in the promotion of OLHI’s complaints services During the last 3 years, OLHI has significantly enhanced efficiency and reduced the cost of delivery of its information services by providing consumer information on line and through its automated telephone call systems
33	Develop up-to-date descriptions that include job responsibilities and the qualifications required for the role	Y2	Completed	Up to date job descriptions for key roles were developed in connection with the Human Resources review commissioned by the OLHI Board and conducted in fiscal 2010/11 by an independent consultant (“the HR Review”)

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34	Make optimal use of the dispute resolution methods that are available	Y1/ Y2/ Y3	Completed	OLHI has upgraded its three stage complaints process to use methods that permit increased disclosure of information and communication among the parties. OLHI clearly communicates to consumers the process that it uses at each stage of its complaints resolution process by publication of this information on line, in its consumer brochure, and in correspondence with the consumer at the outset of filing a complaint with OLHI
35	Change the titles of staff to more accurately reflect the essential nature of the work that they do	Y2	Completed	Job titles were developed in connection with the HR Review ; for example “Telephone Counsellor” was changed to “Information Counsellor” and “Associate General Manager” was changed to “General Manager”
36	Consider options to improve effectiveness and efficiency through streamlining roles and responsibilities	Y2	Completed	The HR Review examined current staff roles and responsibilities and identified the challenges associated with having part time retirees staffing key roles in complaint handling; this study recommended that OLHI pursue opportunities to engage full time complaints staff as its current part time staff retires
37	Initiate the complaint handling process if the insurance company has not provided a final response within sixty days of the date that the consumer submits a written complaint to the member company; Permit CLHIO to extend this time limit in exceptional circumstances in accordance with established Guidelines	Y2	Completed	OLHI negotiated this recommendation with industry; it was agreed that consumers should have access to OLHI’s complaint handling process if Member Companies had not provided a final response to the consumers within a reasonable time from filing the complaint with the member Company, rather than at the end of the individual Member Company’s internal process; it was agreed that a ninety day versus sixty day timeframe to complete the member Company process was more reasonable based on the average time taken to complete a complaint review; OLHI’s Board approved this approach at its June 2011 Board meeting and this change in process was implemented by Member Companies in January 2012
38	Establish benchmarks for the receipt of responses and other information from consumers and member companies, publish those	Y2	Completed	OLHI negotiated this recommendation with industry; it was agreed that the appropriate time frames would be i) 30 days for both the consumer and insurer to provide all relevant complaint information;

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	benchmarks, and create a mechanism for monitoring them			and ii) 45 days for insures to respond to OLHI’s settlement recommendations. OLHI’s Board accepted this approach at its June 2011 Board meeting and this change in procedure was implemented in January 2012. OLHI publishes these benchmarks on its Web sites and advises individual consumers who file complaints of these timeframes in standard correspondence
39	Establish internal benchmarks for time lines (including the completion of typical steps in the information and complaint handling processes, and an overall completion period), publish those benchmarks, and create a mechanism for reviewing cases that fall outside the benchmarks	Y2	Completed	OLHI negotiated this recommendation with industry; it was agreed that the benchmark for file completion would be for OLHI to resolve 80% of complaints within 120 days; This was adopted by OLHI’s Board at its June 2011 meeting and implemented in January 2012. Following the agreement with industry on external benchmarks, OLHI established internal benchmarks as follows: i) to reply to consumer’s initial complaint within 3 business days; and ii) to provide a written response to consumer with the final outcome of the complaint or a recommendation to escalation the complaint within 90 days. Compliance with these benchmarks are audited monthly; Information to date is that OLHI resolves 82% of all complaints within 60 days
40	Redraft provisions pertaining to confidentiality, admissibility and compellability that are found in the Terms of Reference, Authorization and Agreement for CLHIO Dispute Resolution Service Form, Member Consent Form and any other CLHIO document so as to make the provisions internally consistent and bring them into compliance with the Framework	Y3	Completed	All key OLHI documentation has been re-drafted following the agreement with industry to revise OLHI and Member Companies’ complaint handling processes
41	Obtain a signature on behalf of member insurance companies to the provisions contained in the redrafted Authorization and Agreement for CLHIO	Y3	Completed	OLHI negotiated this recommendation with industry and it was agreed that a plain language “Authorization & Agreement for Dispute Resolution Services” would be signed by each of the consumer, OLHI, and the insurer for each complaint filed with

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	Dispute Resolution Service Form			OLHI. OLHI’s Board accepted this approach at its June 2011 Board meeting and this new form has been in use since January 2012. The revised form has been posted for consumers to download on OLHI’s Web sites since January 2012
42	Require prior written consent from the consumer before contacting an insurance company to discuss that consumer’s concerns	Y3	Completed	This recommendation was implemented by obtaining the consumer’s consent in the “Authorization & Agreement for Dispute Resolution Services” which is signed by all parties upon initiation of a complaint with OLHI
43	Retain the original written consent of the consumer in the main file and keep a copy in any duplicate file	Y1	Completed	This practice was implemented in December, 2008 and incorporated in OLHI Complaint Procedures Manual developed in fiscal 2010/11
44	Ensure that, where permissible at law, consumers and member companies indicate in writing their agreement to suspend any and all relevant limitation periods until CLHIO has completed its dispute resolution activities	Y3	Completed	This recommendation was implemented by obtaining the parties’ consent in the “Authorization & Agreement for Dispute Resolution Services” which is signed by all parties upon initiation of a complaint with OLHI; Quebec law does not permit the suspension of a limitation period and hence this recommendation can not be implemented in Quebec; OLHI’s “Authorization & Agreement for Dispute Resolution Services” advises consumers that the suspension of the limitation period does not operate in Quebec
45	Ensure that the process for referring cases to OmbudService Officers is: Clarified in the procedures manual; Communicated through the website, brochures, and other channels; Included as a topic in staff training	Y2	Completed	This recommendation was completed through inclusion of explanation in the OLHI Complaint Procedures Manual and numerous complaints staff training sessions held in fiscals 2009/10, 2010/11, and 2011/12; OLHI’s new consumer brochures developed in fiscal 2010/11 and its new English and French Web sites launched in August 2009 clarify and communicate this information
46	Ensure that the process for referring cases to the Senior Adjudicative Officer(s) is: Clarified in the procedures manual; Communicated through the website, brochures and other channels; Included as a topic in staff training	Y2	Completed	This recommendation was completed through inclusion of explanation in the OLHI Complaint Procedures Manual and numerous complaints staff training sessions held in fiscals 2009/10, 2010/11 and 2011/12; OLHI’s new consumer brochures developed in fiscal 2010/11 and its new English and French Web sites launched in August 2009 clarify and communicate this

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	program			information
47	Develop written recruitment procedures for future recruitment and adopt consistent recruitment practices that are in compliance with the procedures	Y2	Completed	Recruitment procedures were developed by the HR professionals who conducted the HR Review in fiscal 2010/11 and included in the Employee HR Manual that was adopted by OLHI’s Board of Directors at its November 2011 meeting
48	Maintain insurance industry expertise as an important criterion for selection of Telephone Counsellors, Complaints Counselors and OmbudService Officers	Y1/Y2/ Y3	Completed	OLHI has followed this recommendation in all hiring decisions undertaken since 2008, while at the same time seeking to ensure new staff has additional expertise in alternative dispute resolution as recommended by the Independent Review
49	Develop a comprehensive manual of operational procedures and share it with the staff	Y2/Y3	Completed	A complaint procedures manual was developed in fiscal 2010/11 ; an information services manual was developed in fiscal 2011/12; a copy of these manuals was provided to relevant staff together with associated training and /or coaching
50	Develop a comprehensive training program which covers topics including: CLHIO policies and procedures; Dealing with challenging parties; Effective listening skills Conflict resolution theory and practice; Investigative techniques and procedures; Legal information vs. legal advice; Evidentiary standards	Y1/ Y2/ Y3	Completed	Conflict resolution - Staff completed 2 day training session Oct, 2009 which provided training in interest based mediation, conflict resolution and the other skills listed Training in OLHI’s new company wide complaints handling process & procedures and complaint tracking system (CTS) as conducted in March, April, July, and in December 2010 Training in use of standard complaints correspondence, case and peer review processes, and updated CTS functions was conducted in April 2011
51	Develop a performance management system, tailored to the unique responsibilities of CLHIO staff	Y2	Completed	An employee Performance Management policy was adopted by OLHI’s Board in March 2011 and implemented at the beginning of fiscal 2011/12
52	Advise consumers of their right to obtain legal advice at early and various points in their interaction with CLHIO, including before they enter into any binding settlement	Y1/Y2	Completed	This recommendation was implemented by adoption of the new “Authorization & Agreement for Dispute Resolution Services” which is signed by all parties upon initiation of a complaint with OLHI; Consumers are also advised through standard form correspondence at the outset of the proceeding of their right to obtain legal advice and before they enter into any binding settlement

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53	Develop and publish a Protocol on the subject of public disclosure of member companies that do not cooperate with CLHIO in an inquiry or investigation within a reasonable time or do not follow a recommendation within a reasonable time; ensure that any public disclosures preserve the confidentiality of the consumer; and amend the Terms of Reference to reflect the terms of the Protocol.	Y3	Completed	OLHI negotiated this recommendation with industry and it was agreed that publication would be made through OLHI’s Web sites, with any confidential consumer information being redacted; OLHI’s Board accepted this approach at its June 2011 Board meeting and this process became effective from January 2012. OLHI’s new “Authorization & Agreement for Dispute Resolution Services” notifies consumers that OLHI will publish a report containing non-binding recommendations that are not accepted by an insurer on OLHI Web sites.
	ACCOUNTABILITY & TRANSPARENCY			
54	Develop a three year consultation plan which commits to regular discussions with stakeholders, including consumer organizations, member companies and regulators	Y3	Completed	OLHI’s Board adopted a three year Stakeholder Consultation Plan at its November 10, 2011 Meeting
55	Continue to work with regulators to conclude a mutually acceptable Protocol on information to be provided by OmbudServices to regulators	Y1/ Y2/ Y3	Initiated/ Outstanding	OLHI is awaiting regulator direction on the nature and scope of the additional information it seeks from OLHI
	OTHER			
56	Commission an independent, in-depth Consumer Feedback Survey after any changes in policies and procedures emanating from this Review are implemented	Y3	Outstanding	In March 2012, OLHI’s Board approved the conduct of this survey during the 2013/14 fiscal year. The survey could not be conducted until a reasonable time (1 year) following the implementation of new OLHI and industry complaint processes, launched January 1, 2012

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57	Engage in discussions with member insurance companies and CLHIA to set standards for the roles and responsibilities of the companies’ internal Ombuds or Consumer Complaints Officers	Y3	Completed	OLHI discussed this issue with industry and it was agreed that insurers have a statutory responsibility to appoint an Ombuds person and to have a published internal complaints handling process. Member companies felt that, beyond those requirements, it should be within the purview of the individual insurer to establish the roles and responsibilities of its internal Ombudsman. OLHI’s Board accepted this approach at its June 2010 Board meeting
58	Develop a “Service Commitment” document for member companies to sign, through which companies would pledge to issue their internal final response within the time period specified in Recommendation 37	Y3	Completed	This is addressed by fulfillment of recommendation # 37 ; the consensus was that a separate document was not required
59	Increase the capacity of the case management system to capture additional data on cases and produce regular and ad hoc reports. Analyze the data and reports on a regular basis, and use the analyses to make appropriate changes to policies and procedures	Y2/Y3	Completed	This recommendation was completed in fiscal 2010/11 through the launch of OLHI’s upgraded CTS (Complaint Tracking System) which includes auditing tools to permit effective monitoring of compliance with established processes ; The tools provided by this systems also permits OLHI to conduct regular data analyses to monitor case loads and analyze trends in complaint handling; data analyses have been used to identify appropriate changes in complaint handling and compliance with OLHI’s established benchmarks and time frames for complaint handling
60	After the Board of Directors has given direction relating to the recommendations contained in this Report, review and revise all internal documents and materials to ensure clarity, accuracy and consistency in terminology	Y2	Completed	This recommendation was addressed by the completion of recommendation # 40