



First Nations
**FINANCIAL
MANAGEMENT
BOARD**

**CONSEIL
DE GESTION
FINANCIÈRE** des
Premières Nations

January 31, 2023

Mark Wright – Director, Communications and Stakeholder Relations
20 Queen Street West, Suite 2400, P.O. Box 8
Toronto, ON M5H 3R3
Fax: 1-888-422-2865
Email: publicaffairs@obsi.ca

Re: Comments on the OBSI Governance Review

The First Nations Financial Management Board (“the FMB”) is pleased to provide the Ombudsman for Banking Services and Investments with comments on the 2023 Governance Review.

Summary:

The key point that the FMB wishes to convey in this letter is that the OBSI should strive to identify and meet their obligations under *United Nations Declaration on the Rights of Indigenous Peoples* and under their public interest mandate. One simple and concrete measure in this regard is to include at least one mandatory spot for an Indigenous person on their Board of Directors.

General Comments: Requirement to engage with Indigenous Peoples

We welcomed the recommendation in the OBSI’s 2021 Review to “include Indigenous ancestry” as a metric to the Board of Directors’ diversity deliberations.

This is a positive step.

However, Indigenous inclusion is not merely necessary to ensure the organization “better aligns with emerging best practices and the standards established for federally incorporated businesses under the *Canada Business Corporations Act*”. Rather, we view it is a requirement of the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”), adopted by the United Nations General Assembly on September 13, 2007, and now the law of Canada.

UNDRIP and OBSI

OBSI is overseen by the Canadian Securities Administrators, including the British Columbia Securities Commission, which is subject to British Columbia UNDRIP legislation and territorial administrators, which are subject to federal UNDRIP legislation (*United Nations Declaration on the Rights of Indigenous Peoples Act* (2021) (UNDA)), and the Federal Consumer Agency of Canada, also subject to UNDA.

Accordingly, administrative decisions made by CSA and FCAC, including decisions to recognize or contract with OBSI and/or outsource ombudsperson services, are required to comply with UNDRIP. This includes the requirement to consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

How is this being implemented? British Columbia passed its own UNDRIP legislation in 2019, and, in October 2022 published the [*Interim Approach to Implementing the Requirements of Section 3*](#) of that legislation. We anticipate that Canada will implement something similar soon.

Under the approach, “the province must approach policy and legislation development that may affect Indigenous Peoples in a manner that ensures Indigenous Peoples are fully involved partners in the process and have opportunities to influence the outcome of matters that may affect them”, ie. “Once it is determined that the proposed policy or legislation may affect Indigenous Peoples, effective processes for Indigenous Peoples to participate in developing policy and legislation must be implemented.”

B.C.’s reconciliation approach notes that when the law or policy affects Indigenous peoples, it is about working in partnership with Indigenous peoples.

Practically, this means that the OBSI, FCAC and/or the CSA will need to collectively engage in a way that is consistent with B.C.’s reconciliation approach and/or Canada’s future guidance on consultation and cooperation. Effective October 2021, this means that OBSI should be following B.C.’s approach in the development of legislative instruments, policy, and administrative decisions.

Therefore, decisions regarding OBSI’s board composition should include consultation and cooperation with Indigenous peoples by OBSI, the CSA, and FCAC. The FMB has proposed an organization for this process called the Indigenous Council on Financial Regulation and Standard Setting (ICFRSS). We have presented this concept to members of the CSA, OSFI, the Bank of Canada, and the federal Ministry of Finance and would be pleased to present it to OBSI and/or FCAC.

Invariably, the outcome of consultation and cooperation will require at least one Indigenous person on OBSI's board as part of Indigenous reconciliation and UNDRIP compliance.

OBSI's Public Interest Mandate

The remit of OBSI includes all Canadians and it must operate in the public interest.

Canada's 1.8 million Indigenous individuals are uniquely and systemically affected by the history of exclusion in the financial system under the *Indian Act*. For example:

- the Canadian Human Rights Commission's *Horizontal audit on Indigenous employment in the banking and financial sector* acknowledges the under-representation of Indigenous people in the banking and finance sectors, particularly in senior management.¹
- Indigenous people were more likely to have experienced discrimination in a bank, store, or restaurant, when compared to the non-Indigenous, non-visible minority population (42% versus 28%).²
- the FCAC's 2019 mystery shopping study determined that compared with other shoppers, those who self-identified as Indigenous persons more often reported that:
 - product recommendations were not appropriate for their needs
 - information was not presented in a clear and simple manner
 - they were offered optional products, such as overdraft protection and balance protection insurance.³
- the median travel distance from a First Nation's band office to the closest financial institution branch is 25 kilometres.⁴
- a new report from the Union of British Columbia Indian Chiefs (UBCIC) says 99 per cent of First Nations people trying to use their status card have had a negative experience. They report discrimination is the norm when using their status card.⁵

¹ Canadian Human Rights Commission https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/horizontal_audit_on_indigenous_employment_en.pdf

² Statistics Canada <https://www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00002-eng.htm>

³ Federal Consumer Agency of Canada <https://www.canada.ca/en/financial-consumer-agency/programs/research/mystery-shopping-domestic-retail-banks.html>

⁴ Bank of Canada <https://www.bankofcanada.ca/2021/05/staff-discussion-paper-2021-8/>

⁵ <https://www.aptnnews.ca/national-news/discrimination-when-showing-status-card-ubcic/>



- Illustratively, in December 20, 2019, at a BMO in Vancouver, Maxwell Johnson and his 12-year-old granddaughter were arrested by police for using status cards as identification.⁶

Such levels of discrimination indicate a clear public interest need for more Indigenous representation in the financial industry including OBSI.

Further, in December, the [Globe and Mail editorial board](#) wrote that there are countless examples where “a lack of Indigenous voices on a board hurts a company.” They conclude by saying:

Corporate board meetings happen behind closed doors, but what’s said once those doors close has wider resonance. A greater range of voices will lead to smarter decision-making – and higher profits.

Indigenous peoples are also constitutionally recognized by Canada, having aboriginal and treaty rights. We are not stakeholders – we are rightsholders. We have a public interest expectation to be included in the public dialog of Canada, just as space is made for Quebecois on public and private boards across Canada.

In short, the public interest requires Indigenous people on OBSI’s board.

Sincerely,

Geordie Hungerford, CFA, CAIA, MBA, LLB
Chief Executive Officer

⁶ Vancouver is Awesome local news <https://www.vancouverisawesome.com/local-news/indigenous-grandfather-granddaughter-settlement-vancouver-bank-handcuffing-heiltsuk-nation-maxwell-johnson-5335553>