

EXECUTIVE SUMMARY & RESPONSE TO REPORT ON THE INDEPENDENT REVIEW OF CLHIO'S OPERATIONS

Executive Summary

In March 2008, the Board of Directors of the Canadian Life and Health Insurance OmbudService (“CLHIO”) commissioned an independent review of the organization. The review was conducted by Leslie H. Macleod and Associates, a firm specializing in alternative dispute resolution process, practice, and design.

The report on the independent review (“the Report”) reviewed CLHIO's operations with reference to the guidelines contained within the Framework for Collaboration (“Framework”), an agreement between the three OmbudServices who are members of the Financial Services Ombuds Network (“FSON”), including CLHIO, and the Dispute Resolution Committee of the Joint Forum of Financial Market Regulators and Finance Canada.

The Framework sets out principles and guidelines that are designed to assist the OmbudServices in achieving their public interest mandate. The seven guidelines are as follows:

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

The Report highlights the following strengths of CLHIO:

- 1) Full co-operation of CLHIO's Board of Directors, management and staff in the conduct of the review;
- 2) Dedication and independence of the Board of Directors;
- 3) Goodwill and commitment of staff and management;
- 4) Support of participating insurance companies; and
- 5) Demonstrated effort made by the organization to implement policies & procedures in compliance with the Framework.

The Report found that CLHIO was in compliance with many of the standards endorsed by it and by the regulators. As might be expected from such a thorough review, the Report also identified areas of improvement as well as recommendations designed to assist CLHIO in achieving its public interest mandate.

In February 2009, CLHIO's Board of Directors adopted a three year plan designed to implement the recommendations of the Report. The following is a list of the recommendations in the Report, as well as a brief summary of the steps that CLHIO has taken and plans to take at this time to implement the Report's recommendations, which together serve as CLHIO's formal Response to the Report on the Independent Review.

Response to the Report on the Independent Review of CLHIO'S Operations

Recommendation # 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.

Comment: *This recommendation requires CLHIO to amend its' By Laws, which in turn requires the agreement of its member companies. Steps are underway to amend CLHIO's By Laws to address these issues, including consultation with the industry association to solicit support of member companies for the restructuring of their voting rights.*

Recommendation # 2:

Bring CLHIO's By-Laws and Board Committee structure into compliance with the Implementation Guidelines relating to Independence.

Comment: *As indicated above, steps are underway to amend CLHIO's By Laws to address these issues, including consultation with the industry association.*

Recommendation # 3:

Explore opportunities for inclusion of a consumer representative on the Board of Directors.

Comment: *CLHIO has identified several potential candidates and expects to implement this recommendation within the current fiscal year.*

Recommendation # 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.

Comment: CLHIO's Board has completed this recommendation by discussing and reaffirming the appointment of the Board Member.

Recommendation # 5:

Revisit CLHIO's budget after the Board of Directors has considered this Report. For in-year 2008-2009, and thereafter, take into account the three-year strategic plan and supporting yearly operational plans developed by the Executive Director and approved by the Board.

Comment: CLHIO has implemented this recommendation commensurate with its adoption of its budget for fiscal 2009-2010 .

Recommendation # 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.

Comment: CLHIO's By Laws require its Directors to act in the best interest of the Corporation and to avoid conflicts of interest. CLHIO is working with its legal advisors to ascertain if additional documentation is required to safeguard the interests of the organization.

Recommendation # 7:

Publish biographical statements of the members of the Board of Directors.

Comment: This recommendation is anticipated to be implemented within this fiscal year.

Recommendation # 8:

Appoint Officers that are full-time or part-time CLHIO employees.

Comment: CLHIO has taken the following steps to implement this recommendation: appointment of a full time Executive Director in April, 2008 and appointment of an internal Corporate Accountant in November, 2008.

Recommendation # 9:

Ensure that CLHIO Officers are not employed by or otherwise associated with the CLHLA or an insurance company member.

Comment: No officers of CLHIO are currently employed by CLHLA or an insurance company member. One Officer is an ex Vice President of CLHLA but is bound by a legal agreement not to act in conflict of interest with CLHIO.

Recommendation # 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.

Comment: CLHIO is in the process of implementing this recommendation.

Recommendation # 11:

Publish a biographical statement for the Senior Adjudicative Officer(s).

Comment: *This recommendation is anticipated to be implemented within the current fiscal year.*

Recommendation # 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.

Comment: *CLHIO is in the process of implementing this recommendation.*

Recommendation # 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.

Comment: *All CLHIO employees, including the Executive Director, as well as independent contractors currently sign an annual Conflict of Interest Policy. CLHIO is in the process of updating its Policy in accordance with this recommendation.*

Recommendation # 14:

Monitor for and investigate any inconsistencies in the approaches of staff or failures to follow prescribed procedures and address, as appropriate, any concerns.

Comment: *CLHIO is in the process of implementing this recommendation.*

Recommendation # 15:

Publish biographical statements for each of CLHIO's staff and members of management.

Comment: *This recommendation is anticipated to be implemented within the current fiscal year.*

Recommendation # 16:

Take responsibility for all aspects of the employer role for those who work for CLHIO.

Comment: *Negotiations are currently underway to ascertain if certain staff under secondment may be transferred to CLHIO without loss of benefits to the affected employees.*

In meantime, CLHIO is in the process of formalizing a written secondment agreement confirming that the affected employees are under the direction and control of CLHIO.

Recommendation # 17:

Acquire in-house or independent external expertise in the areas of law; human resources; accounting, payroll, and benefits administration; and information technology.

Comment: *CLHIO has already implemented this recommendation in part by acquiring in-house legal and accounting expertise in 2008. CLHIO is currently assessing the operational and administrative implications of obtaining in-house or independent external expertise in the areas of payroll, Human Resources & IT functions in the coming years.*

Recommendation # 18:

Obtain office premises in Montreal that are not in the same building as either CLHLA or a member company.

Comment: *This recommendation will be implemented when CLHIO's current Montreal lease expires in the spring of 2013.*

Recommendation # 19:

Engage the services of an independent organization to conduct a professional survey of the level of awareness about CLHIO.

Comment: *This recommendation will be considered following completion of CLHIO's new Communications & Marketing plan, described under recommendation #21, below.*

Recommendation # 20:

Require insurance companies to advise consumers of CLHIO's services and contact information – at three points of time:

- when the policy is originally sent to the consumer;*
- when the consumer initially complains to the insurer; and*
- when the letter of denial is sent (as is done currently).*

Comment: *This recommendation will require collaboration with industry stakeholders.*

Recommendation # 21:

Promote greater awareness of CLHIO and its services by requesting that organizations such as the following provide information:

- employers (through their industry associations) and unions (through their provincial and national associations);*
- independent agents who sell the products of member companies (and their industry associations); and*
- Federal and provincial regulators.*

Comment: *CLHIO's Board of Directors has approved a formal Communications & Marketing Plan developed by external communications professionals to implement this*

recommendation. Phase 1 of this Plan , which includes a new website, consumer brochure, a change of name, and outreach to stakeholders will be implemented within this fiscal year .

Recommendation # 22:

Explore technological means to enhance the link between key words and CLHIO’s website and consider other means of enhancing communication about CLHIO and its services.

Comment: *This recommendation will be implemented through the Communications & Marketing Plan approved by CLHIO's Board of Directors.*

Recommendation # 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 that they sponsor.

Comment: *This recommendation has been fulfilled through the development of the Communications & Marketing Plan approved by CLHIO's Board of Directors.*

Recommendation # 24:

Canvass opportunities for spreading awareness through governmental, professional, and community organizations.

Comment: *This recommendation will be implemented through the Communications & Marketing Plan approved by CLHIO's Board of Directors.*

Recommendation # 25:

Rename the Canadian Life and Health Insurance OmbudService to one that is more distinctive.

Comment: *CLHIO's Board of Directors has approved a change of name and this recommendation is expected to be implemented within the current fiscal year.*

Recommendation # 26:

Negotiate with member companies with a view to reserving the term “Ombuds” for CLHIO and re-titling company Ombuds to “Consumer Complaints Officer.”

Comment: *This recommendation requires collaboration with industry stakeholders to achieve implementation.*

Recommendation # 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 8:00 a.m. to 7:00 p.m. on Monday through Friday; and*
- *making arrangements to provide services to people with disabilities.*

Comment: *This recommendation will be implemented through the Communications & Marketing Plan approved by CLHIO's Board of Directors.*

Recommendation # 28:

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

Comment: *This recommendation requires collaboration with various stakeholders to achieve implementation. CLHIO will consider strategy and methods to address this recommendation in 2010.*

Recommendation # 29:

Develop a mechanism that allows for consultation with regulators, industry, and consumers.

Comment: *CLHIO currently has processes in place that ensure regular and effective communications with its member companies as well as regulatory and industry stakeholders. It is acknowledged both in the Report and by regulatory stakeholders that there is no one body or umbrella group that represents the entire consumer constituency and hence this is the one group for which the establishment of a regular and effective communication mechanism has proven to be challenging. CLHIO's recently adopted Communications & Marketing Plan is focused on enhancing awareness of and accessibility to its services for the consumer constituency. CLHIO will continue to work with other stakeholders in an attempt to identify consumer organizations with which it may establish regular and effective communication channels.*

Recommendation # 30:

Develop a clear fairness standard that is harmonized across the OmbudServices that comprise FSON and is approved by CLHIO's Board of Directors.

Comment: *This recommendation requires collaboration with the other sister OmbudServices to implement. CLHIO will consider strategy and methods to address this recommendation in 2010.*

Recommendation # 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.

Comment: *This recommendation requires collaboration with industry stakeholders to achieve implementation.*

Recommendation# 32

Review the appropriateness of retaining the Consumer Assistance Centre (CAC) functions that are not closely connected to complaints.

Comment: *CLHIO's consumer assistance centre provides a range of valuable information services to the Canadian consumer which are not currently available from any other source. CLHIO is currently in discussions with the industry association with a view to ascertaining how these services may best be delivered to the Canadian consumer.*

Recommendation # 33:

Develop up-to-date role descriptions that include job responsibilities and the qualifications required for the role.

Comment: *CLHIO will be developing a comprehensive human resources management program that will address this recommendation. This program will require the review and approved of CLHIO's Board of Directors prior to implementation.*

Recommendation # 34:

Make optimal use of the dispute resolution methods that are available.

Comment: *CLHIO is committed to ongoing staff training and development. As part of this commitment, CLHIO staff will undertake additional training during this fiscal year on the application of the various dispute resolution methods within CLHIO's specific environment.*

Recommendation # 35:

Change the titles of staff to more accurately reflect the essential nature of the work that they do.

Comment: *CLHIO will be developing a comprehensive human resources management program that will address this recommendation. This program will require the review and approved of CLHIO's Board of Directors prior to implementation.*

Recommendation # 36:

Consider options to improve effectiveness and efficiency through streamlining roles and responsibilities.

Comment: CLHIO will be developing a comprehensive human resources management program that will address this recommendation. This program will require the review and approved of CLHIO's Board of Directors prior to implementation.

Recommendation # 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 and any further material information or documentation that may be reasonably required by the insurance company. Permit CLHIO to extend this time limit in exceptional circumstances in accordance with established Guidelines.

Comment: This recommendation requires collaboration with industry stakeholders to achieve implementation.

Recommendation # 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.

Comment: This recommendation requires collaboration with industry stakeholders to achieve implementation.

Recommendation # 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.

Comment : CLHIO's ability to meet internal benchmarks for response times is dependent, in part, on other stakeholders' collaboration. This recommendation requires collaboration with industry and consumer stakeholders to achieve implementation.

Recommendation # 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.

Comment: CLHIO will first develop documentation that is internally consistent and in compliance with the Framework and expects to complete this task within the current fiscal

year. CLHIO will then seek collaboration of industry and/or consumer stakeholders, as required, to implement the adoption of any standard documentation.

Recommendation # 41:

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

Comment: This recommendation requires collaboration with industry stakeholders to achieve implementation.

Recommendation # 42:

Require prior written consent from the consumer before contacting an insurance company to discuss that consumer's concerns.

Comment: CLHIO expects to implement this recommendation within the current fiscal year.

Recommendation # 43:

Retain the original written consent of the consumer in the main file kept in Toronto and keep a copy in any duplicate file.

Comment: CLHIO has already implemented this recommendation.

Recommendation # 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.

Comment: CLHIO currently has an agreement in place with most of its member companies and plans to collaborate with industry stakeholders with a view to implementing this recommendation. This recommendation requires collaboration with industry stakeholders and consumers to achieve implementation.

Recommendation # 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 the training program offered to all staff.

Comment: CLHIO's Terms of Reference set out the referral process. CLHIO is currently ensuring that the referral process described in its Terms of Reference are consistently

reflected in all its documentation and in all its communications. CLHIO expects to complete implementation of this recommendation within the current fiscal year.

Recommendation # 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 the training program offered to all staff.*

Comment: *CLHIO's Terms of Reference set out the referral process. CLHIO is currently ensuring that the referral process described in its Terms of Reference are consistently reflected in all its documentation and in all its communications. CLHIO expects to complete implementation of this recommendation within the current fiscal year.*

Recommendation # 47:

Develop written recruitment procedures for future recruitment covering matters including hiring criteria, advertising for positions, screening applications, checking references, retaining letters of offer, and retaining letters of employment/retainer, and adopt consistent recruitment practices that are in compliance with the procedures.

Comment: *CLHIO will be developing a comprehensive human resources management program that will address this recommendation. This program will require the review and approved of CLHIO's Board of Directors prior to implementation.*

Recommendation # 48:

Maintain insurance industry expertise as an important criterion for selection of Telephone Counselors, Complaints Counselors, and OmbudService Officers.

Comment: *CLHIO has always had staff with extensive industry knowledge and expertise handling all information and complaints matters. CLHIO will continue to maintain this as an important criterion for selection of futures staff in all roles requiring this expertise.*

Recommendation # 49:

Develop a comprehensive manual of operational procedures and share it with the staff.

Comment: *CLHIO expects to implement this recommendation within the current fiscal year.*

Recommendation # 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; and*
- *evidentiary standards.*

Comment: *CLHIO is committed to ongoing staff training and development. As part of this commitment, CLHIO staff will undertake additional training during this fiscal year on the above recommended topics.*

Recommendation # 51:

Develop a performance management system, tailored to the unique responsibilities of CLHIO staff.

Comment: *CLHIO will be developing a comprehensive human resources management program that will address this recommendation. This program will require the review and approval of CLHIO's Board of Directors prior to implementation.*

Recommendation # 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.

Comment :*CLHIO currently has documentation in place advising consumers to seek legal advice upon initial contact with CLHIO. CLHIO expects to implement the balance of this recommendation within the current fiscal year.*

Recommendation # 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.

Comment: *This recommendation requires collaboration with industry stakeholders to achieve implementation.*

Recommendation # 54:

Develop a three year consultation plan which commits to regular discussions with stakeholders, including consumer organizations, member companies, and regulators.

Comment: *CLHIO currently has processes in place that ensure regular and effective communications with its member companies as well as regulatory and industry stakeholders. It is acknowledged both in the Report and by regulatory stakeholders that there is no one body or umbrella group that represents the entire consumer constituency and hence this is the one group for which the establishment of a regular and effective communication mechanism has proven to be challenging. CLHIO's recently adopted Communications & Marketing Plan is focused on enhancing awareness of and accessibility to its services for the consumer constituency. CLHIO will continue to work with other stakeholders in an attempt to identify consumer organizations with which it may establish regular and effective communication channels.*

Recommendation # 55:

Continue to work with regulators to conclude a mutually acceptable Protocol on information to be provided by OmbudServices to regulators.

Comment: *CLHIO will continue to collaborate with regulators with a view of concluding a mutually acceptable Protocol.*

Recommendation # 56:

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

Comment: *This recommendation will be implemented following completion of CLHIO's new Communications & Marketing Plan.*

Recommendation # 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.

Comment: *This recommendation requires collaboration with industry stakeholders to achieve implementation.*

Recommendation # 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.

Comment: *This recommendation requires collaboration with industry stakeholders to achieve implementation.*

Recommendation # 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.

Comment: *CLHIO recently implemented a new case management system that provides enhanced data collection and reporting functions, thus partially completing this recommendation. Upon implementation of an Information Protocol with regulators, additional enhancements and modifications can be made to this system to capture and report on any additional information that may be required.*

Recommendation # 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.

Comments: *CLHIO expects to complete this recommendation within the current fiscal year.*

Attached as Appendix “A” is the Report on the Independent Review prepared by Leslie H. Macleod & Associates

APPENDIX “A”

**THE NEXT GENERATION:
AN INDEPENDENT REVIEW
OF THE CANADIAN
LIFE AND HEALTH INSURANCE
OMBUDSERVICE**

Prepared by:

**Leslie H. Macleod, B.A., LL.B., LL.M. (ADR)
Leslie H. Macleod & Associates**

October 21, 2008

TABLE OF CONTENTS

Table of Contents	i
Letter of Transmittal	iii
Acknowledgements	iv
PART ONE: INTRODUCTION	1
1.0 Preamble	1
1.1 Objectives of Review	2
1.2 Experience and Qualifications	3
1.3 Methodology	3
1.4 Format of Report	4
PART TWO: BACKGROUND INFORMATION	5
2.0 Establishment of OmbudServices	5
2.1 Establishment of CLHIO	6
2.2 CLHIO's Services	7
2.3 Key Statistics	10
PART THREE: RECOMMENDATIONS RELATING TO STANDARDS	12
3.0 Relevant Standards	12
3.1 Independence	13
3.1.1 Governance Structure	13
3.1.2 Funding	16
3.1.3 Organizational Independence	17
3.2 Accessibility	24
3.2.1 Level of Awareness	25
3.2.2 Member Companies	27
3.2.3 Additional Sources of Information about CLHIO	28
3.2.4 CLHIO Communications	29
3.2.5 Advertising	30
3.2.6 Community Sources	30
3.2.7 Organization's Name	30
3.2.8 Ombuds Name	31
3.2.9 Improvements in Accessibility	32
3.3 Scope of Services	33
3.3.1 Access to Services	33
3.3.2 Scope of Services	33
3.3.3 Jurisdiction	34

3.3.4	Systemic or Widespread Issues	35
3.3.5	Beyond Mandate	35
3.3.6	Assistance to Consumer	35
3.3.7	Consultation on Terms of Reference	36
3.4	Fairness	36
3.4.1	Legalistic Approach	36
3.4.2	Clear Fairness Standard	37
3.4.3	Impartial Procedures	37
3.5	Methods and Remedies	38
3.5.1	Complaint Resolution Methods	38
3.5.2	Timelines	42
3.5.3	Alternatives to Legal Process	44
3.5.4	Outcomes	47
3.5.5	Competent Staff and Consultants	49
3.5.6	Settlement by Consumer	52
3.5.7	Non-Binding Recommendation	53
3.5.8	Public Disclosure re: Firm’s Actions	53
3.5.9	Application to Systemic or Widespread Issues	54
3.6	Accountability and Transparency	54
3.6.1	Annual Report	54
3.6.2	Consultation with Stakeholders	54
3.6.3	Information Protocol	55
3.6.4	Meetings with DR Committee	56
3.6.5	OmbudService Documents	56
3.7	Third Party Evaluation	56
3.7.1	Triennial Evaluation	57
3.7.2	Governance Practices and Standards	57
3.7.3	Access to Materials	57
3.7.4	Public Interest Purpose	57
3.7.5	Discussion of Report by Board of Directors	57
3.7.6	Publication of Evaluator’s Report	58
PART FOUR: OTHER RECOMMENDATIONS		59
4.0	Introduction	59
4.1	Consumer Feedback	59
4.2	Insurance Company Contacts	60
4.3	Insurance Company Service Commitment	61
4.4	Case Management System	61
4.5	Internal Documentation	62
4.6	Conclusion	63
APPENDIX “A” – List of Recommendations.....		64

LETTER OF TRANSMITTAL

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October 21, 2008

Mr. Bernard Bonin
Chair, CLHIO
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Dear Mr. Bonin:

It is my honour to enclose a copy of my Report entitled *The Next Generation: An Independent Review of the Canadian Life and Health Insurance OmbudService*. The Report is the culmination of the external review that I conducted in accordance with the Workplan approved by the Board.

The reference to the “next generation” reflects my view that the Canadian Life and Health Insurance OmbudService is now poised to move to another stage in its evolution, which will be marked by ongoing innovation.

You will note that the Report contains sixty recommendations. These recommendations are intended to further CLHIO’s compliance with relevant standards, enhance its conflict resolution processes, and strengthen organizational effectiveness.

I appreciate the interest and support that you and your colleagues have demonstrated in relation to this Review. I would also like to advise you that I received full co-operation from CLHIO staff and representatives and from the stakeholder community.

I trust that the recommendations contained in this Report will assist the Board as it guides CLHIO into the next generation.

Sincerely,



Leslie H. Macleod, B.A., LL.B., LL.M. (ADR)
Principal, Leslie H. Macleod & Associates

Encl.: Report

ACKNOWLEDGEMENTS

I would like to thank the Canadian Life and Health OmbudService (“CLHIO”) for the opportunity to conduct this independent Review of the organization. As a result of this Project, I have come to appreciate the complexity of the Canadian financial services sector and the unique challenges that face CLHIO in the fulfillment of its mandate.

It is important to acknowledge that I received full co-operation throughout my Review. CLHIO gave me unrestricted access to its premises and its materials. All requests for information and documentation were responded to promptly and comprehensively. I was invited to interview anyone I chose.

I would especially like to thank Ms. Barbara Waters, who was the General Manager of CLHIO when I embarked upon this Project and who continued to offer assistance after her retirement. Ms. Holly Nicholson, who was subsequently appointed the Executive Director, was also very generous with the time she devoted to supporting this Review, which I appreciated very much.

I am also grateful to Ms. Mary Boles and Ms. Suzanne Comtois who showed considerable patience in explaining the “ins and outs” of CLHIO procedures and who assembled cases for me to review. Thanks are also extended to Ms. Sophie Nicholson, whose administrative skills were of great assistance in organizing the many tasks involved in this Review. Other staff, the OmbudService Officers, and the Senior Adjudicative Officer provided me with extremely helpful information as well.

The Board of Directors demonstrated a keen interest in this Review and took an active role in it. I am grateful to the Chair, Mr. Bernard Bonin, and to the other Board members – all of whom took the opportunity to meet with me individually and with whom I met collectively as well.

This Review would have been incomplete without the input of key stakeholders. I was pleased that all the stakeholders that I approached agreed to participate in this Review. Like CLHIO, they were generous with their time and their views. I extend my thanks to the regulators, to the Canadian Life and Health Insurance Association (“CLHIA”), and to the member insurance companies who so kindly offered their input and assistance during the Review.

Those that I spoke to provided me with more than information. They also gave me their candid views about the strengths of CLHIO and ways in which it could be improved. Many of the ideas generated in this Report came from those I consulted. While I have not attributed comments and ideas to particular individuals, I would like to acknowledge that I relied enormously on the information and views that were kindly shared with me.

L.H.M.

**THE NEXT GENERATION:
AN INDEPENDENT REVIEW OF THE CANADIAN
LIFE AND HEALTH INSURANCE OMBUDSERVICE**

**THE NEXT GENERATION:
AN INDEPENDENT REVIEW OF THE CANADIAN
LIFE AND HEALTH INSURANCE OMBUDSERVICE**

PART ONE: INTRODUCTION

1.0 Preamble

This Report has been entitled “The Next Generation” to signal that it is time for the Canadian Life and Health OmbudService (“CLHIO”) to move to another stage in its evolution.

In the first six years of its existence, CLHIO focused on building a strong foundation. It fostered positive relationships with member companies, developed policies and procedures, and dealt with myriad business challenges inherent in establishing a new enterprise. The organization did an excellent job in overcoming resistance to its very existence. In my view, the time is now ripe for CLHIO to make the changes which will allow it to forge a new identity.

There are a number of forces which support the shift towards the next generation. Firstly, approximately a year ago, the regulators and CLHIO endorsed new standards, and CLHIO will have to make some changes to meet those standards. Secondly, CLHIO hired a new Executive Director in the spring of 2008, who comes from outside the insurance industry and brings a fresh perspective to the organization. Finally, this Report contains recommendations for innovation, which will hopefully be of assistance as CLHIO makes a shift.

In my opinion, CLHIO is in compliance with many of the standards endorsed by it and by the regulators. There are, however, three critical areas which are in need of immediate attention. Firstly, CLHIO must assert and protect its independence more strongly. Secondly, it must increase its profile amongst the customers it is meant to serve. Thirdly, there are a number of improvements to policies, procedures, and operations that are warranted. These three areas for change are the principal focus of this Review.

1.1 Objectives of Review

CLHIO's Board of Directors ("Board") commissioned this external Review to obtain an independent opinion on the extent to which CHLHO:

- is in compliance with the seven Guidelines contained in the Joint Forum's¹ *Framework for Collaboration* ("Framework")² that were mutually agreed upon by CLHIO and various regulators;
- is operating in accordance with its own internal documents, including the ten service standards, the By-laws, and the Terms of Reference; and
- is delivering its services effectively, including following best practices for conflict resolution.

The essential question underlying this Review was expressed succinctly by one of the Board members who said that it was up to me to answer the following question: "Is CLHIO doing a good job?" That question will be answered by assessing CLHIO against the Guidelines that it has agreed to with its sister ombuds organizations and regulators, the standards that it has set for itself, and the best practices that are emerging in the field of conflict resolution.

The rationale for conducting this Review is a compelling one. To quote from the *Framework*, OmbudServices must "fulfill the public interest objectives of complaint resolution..."³ In articulating those public interest objectives, regulators have stressed that complaint systems must be independent, accessible, and effective. The Guidelines set out in the *Framework* give substance to those principles and others and will be examined more closely in other sections of this Report.

¹ The Joint Forum of Financial Market Regulators ("Joint Forum") was founded in 1999 by the Canadian Council of Insurance Regulators ("CCIR"), the Canadian Securities Administrators ("CSA"), and the Canadian Association of Pension Supervisory Authorities ("CAPSA"). It also includes representation from the Canadian Insurance Services Regulatory Organizations ("CISRO"). See www.jointforum.ca. The DR Committee is a Standing Committee of the Joint Forum. It was established by the Joint Forum and the federal Department of Finance to work with the OmbudServices on the development and monitoring of standards.

² Joint Forum of Financial Market Regulators, *The Financial Service OmbudsNetwork - A Framework for Collaboration*, August 10, 2007 [hereinafter referred to as the *Framework*]. The *Framework* provides for ongoing collaboration amongst provincial and federal financial service regulators and three OmbudServices in that sector: CLHIO, the General Insurance OmbudService ("GIO"), and the Ombudsman for Banking Services and Investments ("OBSI"). The *Framework* contains both the underlying premises upon which the current OmbudServices model is built and the basic architecture (through a DR Committee) for maintaining regular communication amongst the OmbudServices and the regulators. The document also describes seven guidelines and gives specific direction as to how the Guidelines can be achieved.

³ *Ibid.* at p. 1 [*Framework* not paginated].

1.2 Experience and Qualifications

I am an independent evaluator and Principal of Leslie H. Macleod & Associates, a firm that provides conflict resolution services. My professional background includes more than twenty-five years of experience in labour relations and employment law and in civil and constitutional law. In addition to conducting independent evaluations, my alternative dispute resolution (ADR) practice includes mediation, facilitation, teaching and training, investigation, and conflict resolution systems design.

My educational qualifications include a Master of Laws degree (LL.M.) in ADR. I am an Adjunct Professor at Osgoode Hall Law School where I co-direct the LL.M. in ADR Program and I have taught at the University of Toronto Law School as well. I worked in the Ontario Public Service from February, 1988 to January, 1999 in a variety of roles including Assistant Deputy Attorney General responsible for civil and constitutional law. I have no prior affiliation with the CLHIO.

1.3 Methodology

On March 4, 2008 CLHIO's Board of Directors approved a Workplan to guide this external Review. In accordance with the Workplan, I did the following:

- met with management to obtain information and provide updates on progress;
- confirmed the evaluation measures that would be used for this Review;
- reviewed CLHIO material, including corporate policies and procedures and consumer communications;
- interviewed staff⁴ and management⁵ in Toronto and Montreal;
- interviewed the Senior Adjudicative Officer;
- reviewed the case management system and available data;
- reviewed the Client Satisfaction Survey that had been previously conducted by an outside firm;
- consulted with stakeholders including regulators, the Canadian Life and Health Insurance Association ("CLHIA")⁶ Committee on the OmbudService, and a number of member companies;
- conducted a random file review of complaints handled by Complaints Counsellors and OmbudService Officers;
- conducted research relating to regulation of the financial services sector, other OmbudServices, and Board governance; and
- provided status reports to the Standards Committee and Board of Directors.

⁴ The term "staff", as used in this Report, includes Telephone Counsellors, Complaints Counsellors, and OmbudService Officers and does not distinguish between "employees" and "independent contractors".

⁵ "Management" comprises the former General Manager, the current Executive Director, the Associate General Manager, and the Manager, Quebec Region.

⁶ CLHIA is a voluntary non-profit association of member companies which was established in 1894 and now accounts for 99% of Canada's life and health insurance business: See www.clhia.ca.

Completion of the tasks highlighted above provided me with the information that I required to conduct a review of the CLHIO and fulfill the mandate given to me by the Board of Directors.

1.4 Format of Report

This Report is divided into four Parts. Part One contains background information relevant to the Review. Part Two gives further context by describing the establishment of OmbudServices generally and CLHIO specifically. It also explains the key stages in CLHIO's processes and provides some key statistics relating to CLHIO's operations. Part Three addresses the Guidelines articulated in the *Framework* and assesses how well CLHIO performs in relation to each Guideline. CLHIO's internal standards are taken into account as well. Recommendations for change which are relevant to the various Guidelines are made in Part Three. Part Four contains some additional recommendations that are relevant to CLHIO's ultimate effectiveness and efficiency. The Conclusion is also found in Part Four.

For ease of reference, the recommendations are numbered sequentially from 1 to 60 in the Report. Each recommendation is accompanied by my rationale for suggesting it. A list of all the recommendations is contained in Appendix "A" which begins at p. 64.

PART TWO: BACKGROUND INFORMATION

2.0 Establishment of OmbudServices

The MacKay Task Force⁷ was established in December of 1996 to review the financial services sector in Canada. In September of 1998, it delivered its Report, which contained 124 recommendations for change. One of the four main themes was “empowering consumers”, which included the need for effective redress⁸ mechanisms. The Task Force recommended a redress system comprising a federal financial sector ombudsman office⁹ and an internal ombudsman for each institution.

The MacKay Report generated considerable debate as to what form the ombuds function should take. The three prominent models discussed were a single public sector ombuds; a single multi-industry non-government ombuds; and separate, industry-specific, non-government ombuds. Financial institutions and their respective associations were in favour of the latter model. A compromise was forged, which led to the creation of the Financial Services OmbudsNetwork (“FSON”) in November of 2002. At that time, FSON included the three external OmbudServices (CLHIO; General Insurance OmbudService (“GIO”); and Ombudsman for Banking Services and Investments (“OBSI”)), the member companies’ internal ombuds representatives, and the Centre for the Financial Services OmbudsNetwork (“CFSON”).¹⁰

CFSON was envisioned as the “one window” point of entry for consumers who had a complaint about financial services providers. Depending on the nature of the concern expressed, callers were referred to their financial institution, to the industry OmbudService, or elsewhere for assistance. CFSON was also given a role in setting standards for the OmbudServices and monitoring them. CFSON was dismantled in May of 2006, succumbing to a strongly-held view that it was not fulfilling its mandate.

Aspects of CFSON remain. Calls to the original CFSON toll-free number are answered by one of the OmbudServices. Most importantly, FSON still exists – albeit as a virtual organization without the overhead associated with a centre. FSON comprises CLHIO, GIO for property and casualty insurance, and OBSI for banking and securities.

⁷ *Report of the Task Force on the Future of the Canadian Financial Services Sector: Change, Challenge, Opportunity*, Ottawa: Department of Finance, September 15, 1998 [hereinafter the *MacKay Report*].

⁸ “Redress” was defined as “... a broad concept which encompasses substantive rights, enforcement mechanisms and remedies, as well as all related procedural elements”: *Ibid.*, “Empowering Consumers,” *Background Paper #3* [hereinafter “Empowering Consumers”], at p. 75.

⁹ The Task Force recommended that all federally regulated institutions be required to belong and that provincial institutions be encouraged to opt in.

¹⁰ The entities covered by the “FSON” acronym have evolved over time. “FSON” currently comprises only the three external OmbudServices.

With the closure of CFSON, the regulators sought another means by which to perform their responsibilities for consumer protection. This led to a series of discussions between the regulators and FSON which culminated in the *Framework for Collaboration*. As part of the Framework, it was agreed that each OmbudService would undergo an independent review and that the results would be shared with the regulators. It was further agreed that OBSI would be reviewed in 2007,¹¹ followed by CLHIO in 2008, and GIO in 2009. It is expected that this Report, which contains the results of the independent review of CLHIO, will be shared with the regulators and the other OmbudServices in the Fall of 2008. I understand that it will also be posted on CLHIO's website.

CLHIO's Board of Directors and Executive Director recognize the role of regulators in promoting the public interest. They support the principles and the requirements of the *Framework*. Further, they are committed to making the kinds of changes that will bring CLHIO into full compliance with relevant standards and position CLHIO to fulfill its mandate in a highly professional manner.

2.1 Establishment of CLHIO

CLHIO's raison d'être emanated from the decision to adopt a self-regulation model for complaints relating to the products and services of companies in the financial services sector. The two-tier model is enshrined in legislation. The *Insurance Companies Act*, requires that federally regulated¹² insurance companies establish internal procedures for dealing with complaints.¹³ It also requires that they become members of an independent complaint-handling organization, which they can choose.¹⁴ CLHIO was established to serve as the primary complaint-handling organization for complaints relating to life and health insurance products and services.

To understand the CLHIO of today, it is instructive to examine its genesis and evolution. Prior to the establishment of CLHIO, CLHIA provided information/education, complaint-handling, and ombuds services to consumers. CLHIO began operations in November of 2002 by acquiring the ombuds investigative services previously provided by CLHIA. In April of 2004, the staff and resources associated with the complaint-handling functions of the Consumer Assistance Centre ("CAC"),¹⁵ until then operated by CLHIA, were transferred to CLHIO. In January of 2006, the remaining CAC services at CLHIA (information and education) were assumed by CLHIO as well.

¹¹ See Phil Koury and Debra Russell, the Navigator Company, *Independent Review, Ombudsman for Banking and Investments*, September, 2007 [hereinafter *OBSI Report*]. The *OBSI Report* is available at www.obsi.ca. See also Professor Elaine Kempson, *Fair and reasonable – An assessment of the Financial Ombudsman Service*, 2004 and Rt. Hon. Lord Hunt of Wirral, MBE, *Opening Up, Reaching Out and Aiming High: An Agenda for Accessibility and Excellence in the Financial Ombudsman Service*, undated.

¹² Most life and health insurance companies are federally incorporated.

¹³ S.C. 1991, c. 47, s. 486 as amended.

¹⁴ *Ibid.*, s. 486.1. Choice is available unless provincial law specifies that they are subject to the jurisdiction of a particular organization.

¹⁵ CAC began in 1973 under the auspices of CLHIA.

CLHIO is a federally incorporated not-for-profit company.¹⁶ Like OBSI and GIO, it operates as a separate entity which is free to determine its own governing structure and operations. CLHIO has approximately 60 members (112 participating companies). The membership represents almost all of the organizations that offer health and life insurance in Canada.¹⁷ There is some overlap between the membership of CLHIO and GIO¹⁸ and between CLHIO and OBSI.¹⁹ The member companies fund both CLHIO and the regulators.

The mandate of the CLHIO is to assist consumers²⁰ with enquiries, concerns and complaints about life and health insurance products and services.²¹ CLHIO maintains offices in Toronto and Montreal. Its services are available at no charge to customers.²² CLHIO receives its funding from fees that are assessed for every member insurance company, based on premium income. There is no restriction on the remedies (including financial settlements) that may result from CLHIO's involvement in a matter.

In most circumstances, complaints that have been or are being adjudicated or complaints that are within the jurisdiction of regulators will not be considered by CLHIO. CLHIO also has the discretion to refuse to deal with complaints made in a frivolous, vexatious, or threatening manner.

Six years have now passed since CLHIO was established. The organization has experienced a significant amount of growth and change during that period. Management and staff have worked hard to build a solid foundation upon which future change can be built.

2.2 CLHIO's Services

This section provides a summary of the key services provided by CLHIO. The two basic categories of services are information/education and complaint-handling. Complaint-handling comprises three distinct functions. These services are described in greater detail in CLHIO's publications.

¹⁶ CLHIO was established by Letters Patent issued on June 17, 2002.

¹⁷ It has been estimated that 99% of life and health insurance companies are members of CLHIO.

¹⁸ Companies may sell both life and/or health insurance (CLHIO) and property and/or casualty insurance (GIO).

¹⁹ Banks, for example, who are members of OBSI, may sell life insurance as well.

²⁰ The term "consumer" is used in this Report to refer to a person who is (a) a member of the public who has insurance or is seeking insurance; and (b) someone else contacting CLHIO on the consumer's behalf such as a family member, representative, or elected official. The vast majority of contacts are made by consumers.

²¹ CLHIO Brochure, *About the Canadian Life and Health Insurance OmbudService*. See also CLHIO, *Terms of Reference*, July 2008, s. 2 wherein "life and health insurance service and/or product" is defined to include life insurance, supplementary health insurance, disability insurance, travel insurance, pensions, annuities, segregated funds, and investment products.

²² The term "customers" includes consumers as well as others (such as insurers) who use CLHIO's services.

Information/Education Role

Most consumers contact the CLHIO by telephone – at least initially. Calls are answered by CLHIO Telephone Counsellors,²³ who may provide customers with one or more of the following:

- basic information on life and health insurance;
- the names of insurance companies that sell the kind of product the caller is seeking;
- help in locating successor life insurance companies;
- assistance with less complex concerns;
- education as to how to effectively deal with an insurance company; and/or
- an explanation of the dispute resolution processes of CLHIO and its intersection with company processes.

While most enquiries can be addressed in a single call, some matters take longer to address. Telephone Counsellors keep a log of their activities, but do not record the caller's name unless follow-up is necessary.

There are seven Telephone Counsellors in Toronto and another seven in Montreal. They work on a part-time basis, rotating with other Counsellors in their office, so that one Counsellor is in the office each day. Telephone Counsellors typically work three days a month. They are paid an hourly rate. All of the Counsellors have significant prior experience in the insurance industry.

Complaint Handling Role – Phase One

If a consumer raises a complaint²⁴ that cannot adequately be addressed over the telephone, the consumer is asked to put the complaint in writing, if that has not already been done. Complaints are referred to a Complaints Counsellor, who interacts with the consumer by telephone and in writing, through fax, e-mail, and letters. Upon receipt of material from a consumer, the Complaints Counsellor sends an acknowledgement letter that advises the consumer about limitation periods.

The Complaints Counsellors offer practical assistance to consumers. This may involve providing suggestions as to how to work productively with the insurer if the insurer is still reviewing a claim, reviewing material provided by a consumer, providing feedback on the merits of the consumer's complaint, and contacting the insurer in an effort to resolve matters.

²³ The term "Telephone Counsellor(s)" is used to distinguish these staff from "Complaints Counsellor(s)." Within CLHIO, "Telephone Counsellors" are known as "Counsellors" or "CAC Counsellors".

²⁴ As a practical matter, a "complaint" is any expression of dissatisfaction with a life or health insurance company product or service. See also the definition of "complaint" adopted by the Financial Services Commission of Ontario ("FSCO") and the Autorité des marchés financiers ("AMF") and the causes of complaints identified by them for the purposes of developing a national company complaint data reporting system through the Canadian Council of Insurance Regulators ("CCIR"): FSCO, "Company Complaint Collection and Reporting Requirements," www.fSCO.gov.on.ca.

Complaints Counsellors are senior personnel who also have significant insurance industry experience. In Toronto, one of the Complaints Counsellors works full-time in a management position; the other two work part-time and do telephone counseling work as well. In Montreal, there are two part-time Complaints Counsellors.

Complaint Handling Role – Phase Two

In the event a consumer's complaint cannot be resolved by the Complaints Counsellor, it may be referred to an OmbudService Officer for investigation. These cases tend to be ones with a high dollar value, a resistant insurance company, and/or an adamant consumer.

Once the decision to refer to an OmbudService Officer has been made, the consumer is sent a kit that contains information about the role of the CLHIO and an "Authorization and Agreement" form for signature. Before an OmbudService Officer can contact the insurer, the consumer must provide written authorization to do so.

OmbudService Officers typically gather and review documentation; examine the relevant insurance policy; provide their view of the complaint; and, where appropriate, try to effect a settlement. Their work is done through a combination of shuttle telephone discussions and correspondence with the parties. As one OmbudService Officer described it, their work has the "essence of mediation."

Two OmbudService Officers resident in Ontario are on retainer; as is one resident in Quebec. Two of the OmbudService Officers were formerly insurance company executives; the other was an in-house lawyer and former internal Ombudsman with a major insurer. The OmbudService Officers work out of home offices.

Complaint Handling Role – Phase Three

Should the consumer remain dissatisfied after the intervention of the OmbudService Officer, the consumer's complaint may be referred to the Senior Adjudicative Officer for further review. Referrals to the Senior Adjudicative Officer require the prior approval of the Executive Director. The Ombuds Officer sends the insurer a letter indicating that the case is moving to the next phase, based on the company's last position, unless the company indicates otherwise within fifteen working days.

If the company's position remains the same, the Senior Adjudicative Officer is sent the file and is subsequently briefed by the Executive Director and OmbudService Officer. The Senior Adjudicative Officer may ask CLHIO for additional information.

After the meeting, the Executive Director informs the parties about the meeting, identifies the list of documents examined, and offers the company the opportunity to provide further documentation within ten days and communicate with the Senior Adjudicative Officer. A similar letter is sent to the consumer. The parties are given an opportunity to speak to the Senior Adjudicative Officer. After a full review of the facts and circumstances, the Senior Adjudicative Officer provides a non-binding recommendation to the parties.

If a member company does not accept the recommendation of the Senior Adjudicative Officer, CLHIO's Terms of Reference give the Executive Director the authority to make that information public. Presumably, the recommendation and the circumstances surrounding the recommendation would be communicated as well. If the recommendation is followed, CLHIO does not "name and shame".

Currently, the Senior Adjudicative Officer for the CLHIO is a highly respected retired Judge, who was a member of Ontario's Superior Court of Justice. CLHIO is currently considering retaining a second Senior Adjudicative Officer who is independent, has proficiency in French, extensive legal experience, and an excellent reputation.

2.3 Key Statistics

To obtain a better sense of the work of CLHIO, in this section of the Report I highlight some key statistics.²⁵ CLHIO and its predecessor have handled more than 1,000,000 enquiries relating to life and health insurance.²⁶ The phonebook is the source of the greatest percentage of awareness about CLHIO (24%), followed by insurance companies and brokers (19%), and government offices (14%).

Approximately 30,000 enquiries are received each year; close to 85% of contacts are made by telephone. Consumers and their relatives make virtually all of the calls. Agents, insurance companies, and business professionals account for the balance. Over 75% of the calls come from Quebec and Ontario. The percentage of calls coming from each Province and Territory is roughly equivalent to each jurisdiction's share of premium income, with the exception of Quebec. Quebec has historically accounted for a greater percentage of calls than its share of premium income. Approximately two-thirds of the enquiries pertain to product information (mostly visitor and travel insurance); and almost one-third pertain to information about companies. Almost 60% of the questions relating to companies are for their address and telephone number.

In addition to the telephone enquiries, CLHIO receives approximately 2,000 complaints per year, 300 of which are reduced to writing. Over 90% of complaints are handled without contacting the insurance company. Close to 50% of the complaints handled by Complaints Counsellors relate to disability claims – denials and failures to pay; complaints about life insurance are the next most common (over 20%), followed by extended health and dental (approximately 11%). By far the most prevalent company function complained against is claims (approximately 68% of complaints handled by Complaints Counsellors), followed by Service (about 12%). In the four fiscal years ending March 31, 2008 an average of 24% of complaints handled by Complaints Counsellors were closed with the insurer maintaining its position; 31% were resolved in the consumer's favour, and 42% of cases were closed by providing additional information.

²⁵ The statistics in this section relate to 2007-2008 unless otherwise stated.

²⁶ The 1,000,000 figure includes enquiries handled by the CAC when it was operated by CLHIA (1973 to 2006).

Of the 210 investigations that were completed by OmbudService Officers from CLHIO's inception to March 31, 2008, approximately 60% were closed with the insurer maintaining its position and the consumers electing not to pursue their complaints further within CLHIO. About 27% of cases resulted in the matter being resolved in the consumer's favour. Almost 12% were closed when the request for assistance was withdrawn by the consumer.

The number of cases referred to OmbudService Officers has declined significantly – from 40 in 2005-2006; to 32 in 2006-2007; and to 15 in 2007-2008. Disability and life insurance cases made up virtually all of that caseload. There is no concrete data by which to determine the cause for this decline. It may be attributable to member companies resolving complex cases, Complaints Counsellors handling more of the complex cases that would otherwise be referred to an OmbudService Officer, or appropriate cases not being referred.

In the period April 1, 2004 - March 31, 2007, three cases have been referred to the Senior Adjudicative Officer. In the two cases related to disputes concerning life insurance premiums, the non-binding recommendations supported the company's views. The third case involved a dispute over the discontinuation of a long term disability benefits. That case resulted in a non-binding recommendation which favoured the consumer. The company followed the Senior Adjudicative Officer's recommendation.

PART THREE: RECOMMENDATIONS RELATING TO STANDARDS

3.0 Relevant Standards

In Part Three of the Report, I examine the standards that have been set out in the *Framework* and in CLHIO's internal documents and assess the extent to which they have been met. I also express my views as to whether or not the organization is operating effectively, including the degree to which it reflects best practices in the area of conflict resolution. Where there is some overlap between the standards enumerated in the Framework, and those of CLHIO, I discuss them under the same or a related heading.

The seven standards in the *Framework* are called Guidelines. As I see them, the Guidelines are key principles that are essential to the credibility of the OmbudServices. The objective of each Guideline and the ways in which the objective would be met are provided in the text of the Framework.

In the Framework, the DR Committee explains that the Guidelines are not meant to be exhaustive or prescriptive. Further, it says: "While it is recognized that an OmbudService may not meet all of the Implementation Guidelines all of the time, the DR Committee expects each of the OmbudServices to be structured and function in a way which will fully achieve the Objectives stated in each Guideline."²⁷ The Guidelines themselves are to be reviewed on a periodic basis.

The seven Guidelines set out in the *Framework* are these: (1) independence, (2) accessibility, (3) scope of services, (4) fairness, (5) methods and remedies, (6) accountability and transparency, and (7) third party evaluation. The ten standards of the CLHIO are expressed as descriptors of its service. Some are multi-faceted. The CLHIO standards are: (1) accessibility, (2) timeliness, (3) courtesy, (4) clarity, (5) accuracy, (6) fairness and impartiality, (7) consistency, (8) knowledge, (9) privacy/confidentiality, and (10) independence and objectivity.

In the following sections of Part Three, I examine the standards and CLHIO's compliance with them. I address key points in relation to each standard and, where I identify any deficiencies, I explain why. Where appropriate, I offer recommendations relating to the particular standard being reviewed.

²⁷ *Framework*, *supra* note 2 at p. 1.

3.1 Independence

To my mind, independence is much more than a concept. It is the *sine qua non* for an OmbudService. An enquiry into independence should be the rightful starting point in any determination about the effectiveness of CLHIO, because any intrusion upon its independence threatens the legitimacy of the organization. If CLHIO is not independent, it simply cannot fulfill its mandate. Independence is not achieved by declaring it to be so. It must be demonstrated to be meaningful.

The *Framework* describes the objective of the Independence Guideline this way: “to assure financial sector consumers who refer complaints to the OmbudService of its independence.” It defines “independence” as “the absence of relationships with the affected financial sector industry, or firms within it, which would cause a reasonable person to question whether the person can fairly and effectively resolve complaints... or provide objective and disinterested oversight.”

Independence and objectivity are also one of CLHIO’s ten service standards. In its service standards, CLHIO bases its independence and objectivity on the fact it is a “non-profit corporation independent of government and industry, governed by a Board of Directors, the majority of which are independent Directors.”²⁸

The Implementation Guidelines relating to Independence specify two key elements that must be in place in order to achieve independence: a robust governance structure and appropriate funding. These will be assessed in sections 3.1.1 and 3.1.2 below. In my view, it is also important to consider whether there are any organizational impediments to independence. This is assessed in section 3.1.3 by reviewing the real and perceived independence of those associated with CLHIO, and the organization itself.

3.1.1 Governance Structure

There are eight members on the Board of Directors; six are “Independent Directors” who bring diverse qualifications and experiences to the Board and two are “Industry Directors” who bring specific expertise in life and health insurance. The Board Chair is an Independent Director. New Directors are sought on the basis of what they can contribute to the Board, in an effort to balance the overall strength of the Board. There is appropriate regional representation.

In accordance with best practices in organizational governance, the Board has established Committees on Standards, Governance, and Nominations. There is no specifically named “Budget Committee.” However, the Board has assigned responsibility for recommending the CLHIO budget and mandatory member assessments to its Committee of Independent Directors, which includes Industry Directors as observers.

²⁸ See, for example, *CLHIO 2006-2007 Annual Review* at p. 4.

Each Director sits on at least one Committee. The Industry Directors are not permitted to vote on the budget or to nominate Independent Directors.

I have reviewed the stipends and costs associated with supporting the Board in its functions and I find them reasonable. The Board generally meets three times a year (the minimum under the By-Laws). The Board may find that it is faced with a heavier than usual workload in the near future, as it considers this Report and whatever results from it. More frequent meetings may be necessary.

It is my impression that CLHIO's Board members recognize the centrality of independence and they are determined to protect it. To bring governance into compliance with the Independence Guideline, two significant changes will have to be made. These are reflected in Recommendations 1 and 2. Recommendations 3 and 4 respond to matters that, while not specifically addressed in the Independence Guideline, have an affect on CLHIO's independence.

Recommendation # 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.

CLHIO's By-Laws respond to many of the Independence Implementation Guidelines enumerated in the *Framework*. However, and very importantly, they do not enshrine appropriate independence criteria. Member companies have ultimate control over the Board and the organization because of their voting rights. By majority vote, they have the power to effect the appointment of Directors²⁹ and the outcome of issues not otherwise reserved for the Board. OBSI and GIO have a different governance structure in which only Board members are voting members of the Corporation.

CLHIO's original governance structure and documents pertaining to that structure were prepared by CLHIA. At the first meeting of the Independent Directors (which includes many of the current Directors) on October 21, 2002 the Board raised concerns about this structure. They proposed a structure consistent with the other two OmbudServices as a means of emphasizing Board independence. In the face of opposition from member companies, the Board ultimately amended their proposal so as to provide Directors with a vote and to maintain the voting rights of members. This was confirmed by the members at the Annual General Meeting held on October 21, 2003. As a result, today, Independent Board members have six out of an approximate total of 118 votes at the Annual General Meeting.

²⁹ Industry Directors are appointed directly by CLHIA, which represents the interests of its Member companies. The Members of CLHIO (most of whom are also members of CLHIA) vote on the Independent Directors who are proposed by the Nominating Committee. The Nominating Committee comprises Independent Directors only.

To my knowledge, CLHIO members have never voted against the appointment of a Director. However, to eliminate that possibility and to bring CLHIO's By-Laws into alignment with the Implementation Guidelines and the other OmbudServices, I recommend that the appropriateness of the current appointment mechanism be reviewed.

Recommendation # 2:

Bring CLHIO's By-Laws and Board Committee structure into compliance with the Implementation Guidelines relating to Independence.

The Implementation Guidelines relating to Independence set out the Board's minimum responsibilities which should be included in a written mandate for the Board. A number of those responsibilities (for example, human resource practices) are not reflected in any written mandate. These discrepancies should be rectified. In addition, the Board Committee structure should reflect the Framework's requirement for a Budget Committee that is limited to Independent Directors.

Recommendation # 3:

Explore opportunities for inclusion of a consumer representative on the Board of Directors.

The Board of Directors does not currently include a consumer representative, although one of the current Board members has legal expertise in consumer issues. Two former Board members were drawn from the consumer constituency. I was told that it is difficult to select someone who is truly representative, given the number of consumer organizations that exist. Despite this difficulty, I recommend that opportunities for inclusion of a consumer representative on the Board be explored for the following reasons.

Firstly, the primary mandate of CLHIO is to address consumer concerns. Secondly, CLHIO's By-Laws recognize that "persons with significant backgrounds in public and consumer affairs"³⁰ contribute to the "diversity of experience and interests"³¹ that should be reflected in the Independent Directors collectively. A consumer representative could be added when a vacancy occurs, or earlier. The present complement of Directors could be increased as the By-laws permit eleven members.

³⁰ CLHIO, *By-Law No. 1 – General By-Laws* [hereinafter "By-Laws"], s. 29(b).

³¹ *Ibid.*

Recommendation # 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.

When the OmbudServices model for the financial services industry was being designed, consideration was given to the concept of three separate OmbudServices with a common Board of Directors. Ultimately, three OmbudServices were created, with separate Boards. I was advised that all the Boards prefer the current arrangement.

The Chair of one of the other two financial services industry OmbudServices sits on CLHIO's Board of Directors. The other Chairs do not sit on an OmbudService Board other than their own. The observations that follow are prompted by the implications of this situation. They are unrelated to the Chair in question, who brings considerable strengths to the position. Having a Chair of only one ombuds on the Board of another is asymmetrical – and it may be the “thin edge of the wedge” that supports the concept of one integrated Board. More substantively, it raises confidentiality issues, though this could be addressed by having Board members execute confidentiality agreements.

As I understand it, the individual in question was invited to become a member of the CLHIA Consumer Assistance Committee (“the Committee”) when it was established in 2000 because of her extensive experience with consumer complaints, gained principally in her capacity as the Insurance Ombudsman for Ontario. Subsequently, when the FSON OmbudServices were created in 2002 the individual and all other members of the Committee were invited to sit as CLHIO Directors. Contemporaneously, the individual was approached with an offer to sit as the Chair of another FSON OmbudService. At the time she was approached, the individual raised her concerns with the two Boards about serving in both capacities. Both Boards decided that she could continue in her dual roles and that her appointment could prove beneficial to each of them.

Taking the points raised above into consideration, I recommend that the Board of Directors discuss the advantages and disadvantages of having a Chair of another OmbudService sit on its Board, and that the Board make a decision in relation to the current situation.

3.1.2 Funding

One of the Implementation Guidelines relating to independence stresses the importance of appropriate funding and the mechanism by which budgets and mandatory assessments to firms are approved.

Recommendation # 5:

Revisit CLHIO's budget after the Board of Directors has considered this Report. For in-year 2008-2009, and thereafter, take into account the three-year strategic plan and supporting yearly operational plans developed by the Executive Director and approved by the Board.

Assessments to member firms are made on the basis of premium income. Under this model, the larger companies pay the greatest fees and fund a significant percentage of CLHIO's budget. A minimum member fee of \$1,000.00 per year applies. While other models for assessing fees could be implemented, the one currently used is rational and I did not hear any objection to it.

There was general agreement amongst those I consulted that CLHIO is adequately resourced for its current mandate. If, however, the recommendations contained in this Report are adopted, the budget will have to be revisited.

To address changing budgetary needs and ensure the independence of CLHIO, I recommend that CLHIO's budget be revisited after the Board of Directors has considered this Report, and given direction to the Executive Director as to policy priorities, so that any necessary 2008-2009 in-year adjustments can be made. I also recommend that when preparing the in-year budget for 2008-2009 and, thereafter, when preparing the budget in advance of each new fiscal year, a three-year strategic plan and supporting yearly operational plans developed by the Executive Director and approved by the Board be taken into account.

3.1.3 Organizational Independence

To assess the independence of the CLHIO, it is necessary to examine the real and perceived independence of the following:

- Members of the Board of Directors;
- Officers of CLHIO;
- Senior Adjudicative Officer;
- CLHIO management and staff; and
- CLHIO itself.

For reasons that will be more fully explained below, any substantial concerns I have about the independence of CLHIO are attributable to the close ties that it has had and continues to have with CLHIA. I offer recommendations to address my concerns.

Members of the Board of Directors

CLHIO has a strong and committed Board of Directors. They bring experience from fields including public service, business, insurance regulation, law, and academe. Six of the eight Directors have no previous affiliation with the life and health insurance industry.

The two Industry Directors are former Presidents of life and health insurance companies and one currently holds a directorship in a member company.

I had the opportunity to confer individually with each member of the Board of Directors and to meet with the Directors collectively. I was impressed by their calibre and the commitment they demonstrated. I also reviewed documentation pertaining to their meetings. Nothing in my interactions or examinations caused me to have any reservations about the independence of the Board members themselves.

The recommendations made in section 3.2.1 (Governance Structure) relate to the Board itself. While I have no concerns about the independence of the individual Board members, I offer two recommendations which are intended to strengthen indicators of their independence. The first relates to conflict of interest; the second, to Directors' profiles.

Recommendation # 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.

Members of the Board of Directors owe a fiduciary duty to CLHIO, whether or not they sign a document acknowledging that duty. They have an obligation to serve in the best interests of the organization and to refrain from acting in any way that constitutes a conflict of interest. Given the centrality of fiduciary duties to the role of Board members, there is good reason to have members sign a document on a regular basis which affirms their understanding of the duty and their agreement to honour it.

Current procedures do not require Board members to sign a Conflict of Interest Policy which prohibits conflicts of interest between their personal, professional, or professional interests and those of CLHIO.³² As this is an important aspect of independence, I recommend that each member of the Board of Directors be required to sign a Conflict of Interest Policy on a yearly basis. The *Framework's* Implementation Guidelines for Independence reference the "best interests" principle, and I did not find that principle in CLHIO documentation either. Therefore, I recommend that the requirement to serve in the best interests of CLHIO be included in the *Conflict of Interest Policy*.

Recommendation # 7:

Publish biographical statements of the members of the Board of Directors.

³² CLHIO's *By-Laws, Ibid.*, put restrictions on who can be an Independent Director (s. 29(a) at pp. 6-7) and require Directors to declare an "interest" in limited circumstances (s. 45 at p. 10). The *By-Laws* do not include a general "no conflict of interest" provision or a requirement to act in the "best interests" of CLHIO.

More than a simple majority of CLHIO's Board members are independent of industry. To increase transparency and to dispel any misconceptions about the current or prior affiliations of Board members, I recommend that CLHIO publish brief biographical statements about them. The biographical statements should be accessible on CLHIO's website and in other relevant publications of the organization.

Officers of CLHIO

Recommendation # 8:

Appoint Officers that are full-time or part-time CLHIO employees.

CLHIO has three Officers: Executive Director (formerly General Manager), Secretary to the Board, and Treasurer. The Executive Director is an employee of CLHIO – as was the former General Manager. The roles of Board Secretary and Treasurer have been filled by non-employees who perform their duties under a consulting agreement and administrative services agreement respectively.

Officers have a very important role in organizations. Not only do they have a significant effect on day-to-day operations, they generally have a persuasive effect on the Board of Directors. At CLHIO, as in other corporations, the Board delegates responsibility for the management of the organization to the Officers. What is unusual is for non-employees to hold Officer positions.

To bring the organization in line with general organizational practices, I recommend that CLHIO Officers be employed by the CLHIO. I suggest that they be full-time employees, if the workload supports such; otherwise, they should be part-time employees. I understand that the current Treasurer performs her duties on a part-time basis and has announced her resignation effective November, 2008. I recommend that her Treasurer duties be performed by a CLHIO employee in accordance with the recommendation above.

Recommendation # 9:

Ensure that CLHIO Officers are not employed by or otherwise associated with the CLHIA or an insurance company member.

How can a person concurrently serve the best interests of CLHIO and CLHIA? Two of CLHIO's three Officers have, simultaneously, been employed at a senior executive level with CLHIA while holding their positions with CLHIO. In my view, this causes an untenable situation that puts the Officer in an inherent conflict of interest and raises confidentiality issues. The same could be said of someone who is employed at a senior level

with a member company while holding an Officer position with CLHIO. This constitutes a threat to independence.

In my view, the objective of the Independence Guideline cannot be met so long as any Officer maintains a relationship with the life and health insurance industry or firms within it. At a minimum, there is a reasonable basis for a perceived conflict of interest. My concern about the Officers is magnified when the many other connections between CLHIO and CLHIA are taken into account, which I explore in more detail later in this Report. Accordingly, and to enhance the independence of the CLHIO, I make the recommendation immediately above.

Recommendation # 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.

Like Board members, Officers owe a fiduciary obligation to CLHIO – whether or not they sign a Conflict of Interest Policy. The current CLHIO Conflict of Interest Policy only requires employees to sign. Officers are not required to sign. Again, given the importance of this to the real and perceived independence of CLHIO, I recommend that Officers be required the same Conflict of Interest document as Board members are required to sign.

Senior Adjudicative Officer

I have no reservations about the independence of the Senior Adjudicative Officer. The only recommendations I have in regard to this role are intended to give stakeholders more information about his background and expertise and to confirm his adherence to conflict of interest rules.

Recommendation # 11:

Publish a biographical statement for the Senior Adjudicative Officer(s).

To increase transparency, I recommend that CLHIO publish a biographical statement for the current Senior Adjudicative Officer and any other person who may fill this role.

Recommendation # 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.

For the same reasons that I recommend Board members and Officers sign a Conflict of Interest Policy, I recommend that the Senior Adjudicative Officer do so.

Staff and Management

Recommendation # 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.

Staff and managers employed by or engaged by CLHIO should be required to sign a Conflict of Interest and Confidentiality Policy when they join the organization and on a yearly basis thereafter.

Recommendation # 14:

Monitor for and investigate any inconsistencies in the approaches of staff or failures to follow prescribed procedures and address, as appropriate, any concerns.

I do not have any basis for concluding that management or staff have a real lack of independence. However, I can appreciate the fact that consumers may perceive there to be a lack of independence, given that (with the exception of the Executive Director) all staff who work on CLHIO matters were previously employed by an insurance company and/or CLHIA. I also note that only the OmbudService Officers are prohibited from working on files that involve a company that they have been or are employed by or with which they have any financial or familial ties.³³

For reasons that will be provided later in this Report, I am satisfied that the benefits of staff having insurance expertise outweigh the disadvantages of such. However, given that most staff gained their expertise through industry or CLHIA, I recommend that CLHIO be especially vigilant in monitoring work, to ensure that past industry experience does not result in any lack of objectivity. Any inconsistencies in approach or failures to follow prescribed

³³ See CLHIO, *Consumer Information and Authorization* document, undated.

procedures should be thoroughly investigated and any concerns should be appropriately addressed.

Indeed, in the course of my review, it became apparent to me that there are some stark differences in the way in which various staff approach their work. In a limited number of cases, I felt that the consumer's concerns did not receive the attention that was warranted. These differences in approach may be explained by factors other than a lack of independence and objectivity. Elsewhere in this Report I make recommendations to address those factors (for example, lack of training regarding procedures).

Recommendation # 15:

Publish biographical statements for each of CLHIO's staff and members of management.

Again, to increase transparency, I recommend that more information on the background and experience of staff and management be available to stakeholders through CLHIO's website and other communication vehicles.

CLHIO

One of the members of the Board acknowledged that CLHIO is perceived by some to be the "captive of the insurance industry." One of the regulators stated that the general perception is that CLHIO and CLHIA are "pretty close." In my opinion, the many connections between CLHIO and CLHIA provide reasonable bases for those perceptions. In fact, the connections raise serious concerns about the actual independence of CLHIO.

Recommendation # 16:

Take responsibility for all aspects of the employer role for those who work for CLHIO.

The connections to CLHIA are many. Section 3.1.2 raises issues relating to Officers in particular. In relation to people who work for CLHIO or serve on its Board, the connections include the following:

- The Managers in both locations – Toronto and Montreal – are employees of CLHIA who have been seconded to CLHIO
- Most of the staff were previously employed by CLHIA;
- Two of the Montreal staff are shared by CLHIA and CLHIO;
- Staff continue to receive their benefits from CLHIA; and
- Four of the current Board members were previously on the Advisory Board for the CLHIA OmbudService.

There is nothing that can be done to erase the past affiliations of staff, managers, or Board members. So long as they currently exercise the appropriate level of independence and objectivity, their past association with CLHIA should not automatically disentitle them from working with CLHIO today. However, the current affiliations are another matter. They threaten the independence of CLHIO.

Therefore, I recommend that CLHIO take responsibility for all aspects of the employer role for those who work for CLHIO. I appreciate that this will require sensitive negotiations between CLHIA and CLHIO about the implications of this transfer of responsibilities. There should be no adverse consequences for staff as a result of this change. CLHIO could speak to OBSI and GIO about joining forces; for example, to provide benefits to employees.

Recommendation # 17:

Acquire in-house or independent external expertise in the areas of law; human resources; accounting, payroll, and benefits administration; and information technology.

The connections to CLHIA extend to key organizational and operational areas of CLHIO. By way of example:

- Legal Counsel for CLHIA has drafted legal documents for CLHIO, regularly attended CLHIO Board and Committee meetings, and provided legal guidance to CLHIO; and
- CLHIA provides a number of services for CLHIO on a retainer basis including human resources; accounting, payroll, and benefits administration; and information technology.

The Board reviews and decides matters in which the interests of CLHIO and CLHIA could reasonably be perceived to be (or are) in conflict. Lawyers have a duty to act in the best interests of their client. To my mind, it is critical that legal advice be provided by a lawyer who is independent of CLHIA and industry. Ideally, that advice will come from in-house counsel. If the requisite level of expertise is not available on a particular matter, it should be obtained from independent outside counsel, retained by General Counsel.

The role of CLHIA's counsel described above, has recently been assumed by CLHIO's Executive Director, who is in a position to provide CLHIO with dedicated legal services and advice. She has served in a General Counsel role and has extensive legal experience in corporate/commercial, employment, benefits, litigation, and risk management.

Services in the areas of human resources, accounting, and information technology are important to the operational effectiveness of CLHIO. Careful consideration should be given to the decision as to whether these services are provided by employees or independent contractors. The overriding factor should be one of maintaining or strengthening CLHIO's

independence. In any case, the expertise in this area should be acquired only from those who are not employed by or otherwise affiliated with CLHIA or member companies.

Recommendation # 18:

Obtain office premises in Montreal that are not in the same building as either CLHIA or a member company.

CLHIO is currently co-located with CLHIA in Montreal. By sharing the same address, immediately adjacent offices, and a receptionist and another employee, CLHIO makes its close connection to CLHIA very apparent. I understand that an Offer to Lease has been signed by CLHIA and CLHIO to extend the co-location in the existing premises for a period of five years. If this transaction is completed, I recommend that CLHIO make plans to obtain office premises immediately after the expiry of that lease. I further recommend that the premises are not in the same building as either CLHIA or another member company.

Concluding Comments on Independence

It was suggested to me during the Review that “Independence is the key; from that the rest will flow.” It is my firm view that CLHIO’s perceived and actual lack of independence is the single greatest threat to its credibility. And of the various factors that impinge on its independence, the close connection to CLHIA is by far the most significant. CLHIA was described to me as a “well organized, well disciplined, and well run” organization which does very effective advocacy work for the life and health insurance industry, which itself is very powerful.

In the words of one of the people I consulted, “CLHIA is a formidable group to be independent from. If CLHIO needed to stand up to the CLHIA, could they and would they?” I think it is critical that CLHIO be perceived to be and actually be in control of all aspects of its policies and operations. Only then will it emerge free of the cloud that currently overhangs it – that it is not fully independent.

It should be noted that CLHIA interacted with me in a very professional manner and provided helpful information to me in this Review. None of the comments made in this Report are intended to be critical of the legitimate work done by the organization.

3.2 Accessibility

There are obvious connections between awareness and accessibility. If people are not aware of CLHIO, the issue of access does not even arise. Consequently, awareness is of critical importance. It is also the case that people may be aware of CLHIO but not be able

to access it effectively – or at all. In the words of one of the Board members, access is a “huge issue.”

The objective of the Accessibility Guideline is to “articulate a framework in which the OmbudService will (a) take active steps to promote knowledge of its services, (b) ensure that consumers have convenient, well identified means of access to its services, and (c) provide its services at no cost to consumers.”³⁴

I will address the requirements noted above in reverse order. CLHIO does not impose any charge for use of its services. Further, it provides convenient and appropriate ways in which to interact with it – principally through telephone, correspondence, fax, and e-mail . However, I cannot make a definitive statement about how much consumers know about CLHIO’s services. The best that I can report is that there is an appropriate level of accessibility to CLHIO if a consumer makes contact with it at the right time.

Accessibility to CLHIO will be improved if:

- an accurate report on the current level of awareness is obtained;
- additional sources of information about CLHIO are developed; and
- information about CLHIO is provided at various points in time.

3.2.1 Level of Awareness

Recommendation # 19:

Engage the services of an independent organization to conduct a professional survey of the level of awareness about CLHIO.

As one of the regulators that I spoke to commented, “CLHIO is not a household name.” If the level of awareness about CLHIO is low and remains so, CLHIO cannot fully succeed in its mission to serve consumers of Canadian life and health insurance products and services. It was widely acknowledged by those I consulted that there is a low level of awareness about CLHIO and its mandate. I must confess that I had only the vaguest understanding of the organization before I embarked on this project.

One of the Board members stated that the “biggest dilemma” that CLHIO faces is how to ensure awareness when consumers have a problem. Another described visibility and accessibility as a “preoccupation” of the Board. While the Board is very conscious of this issue, the “fix” has proven to be elusive. As one Board member put it, “there is no silver bullet.” The Board has requested that the Executive Director give priority to issues surrounding awareness and accessibility.

One Board member admitted not being convinced that CLHIO is getting all the complaints it should. Several Board members stated that the very fact that there are

³⁴ *Framework, supra* note 2 at p. 7.

relatively few complaints to CLHIO raises the issue as to whether there is sufficient awareness of CLHIO'S services.

The CLHIA estimates that approximately 20 million Canadians own life insurance; 855,000 individual policies were purchased in the year 2006 alone. At the end of 2006, insured plans provided 9.6 million people with disability income protection, 20.3 million people with extended health care, and 11.5 million people with reimbursement of dental care expenses. During 2006, Canadians owned 3.7 million individual annuity contracts at the end of the year. In 2006 total premiums and premium equivalents (all lines of business) amounted to \$66.5 billion³⁵ and \$53.4 billion was spent in payments to policyholders. Overall, the CLHIA estimates that the industry provides financial security products to approximately 26 million Canadians. The relatively low level of complaints to CLHIO seems especially curious in light of the fact that 7% of people surveyed reported having a serious concern with their insurance company or broker in the past year.³⁶

This raises a number of puzzling questions that do not have ready answers:

- To what extent are consumers raising their concerns with insurance companies?
- What percentage of complaints to companies are unresolved?
- Do consumers know of CLHIO's services?
- What proportion of those unresolved cases does CLHIO receive?
- Of the cases received by CLHIO that are not resolved in favour of the consumer, to what extent do the consumers accept the result as opposed to give up?
- How many complaints go to a forum other than an insurer or CLHIO, and for what reasons?

While the dominant view is that CLHIO suffers from a lack of visibility, there is no objective data to prove or disprove that view. Therefore, I recommend that CLHIO engage an independent organization to conduct a survey on the level of awareness. It would be worthwhile to approach OBSI and GIO to discuss commissioning a joint survey. Data generated by the survey will be helpful in designing further strategies to enhance awareness and accessibility. After receiving the data CLHIO will be in a better position to conduct a cost/benefit analysis relating to various potential communication vehicles.

³⁵ The total of \$66.5 billion included premiums for life insurance (\$14.0 billion), annuities (\$29.3 billion), and health benefit plans (\$23.2 billion): See www.clhia.ca.

³⁶ "Empowering Consumers," *supra* note 8 at p. 75 referring to a survey conducted by Ekos Research Associates.

3.2.2 Member Companies

Recommendation # 20:

Require insurance companies to advise consumers of CLHIO's services and contact information – at three points of time:

- ***when the policy is originally sent to the consumer;***
- ***when the consumer initially complains to the insurer; and***
- ***when the letter of denial is sent (as is done currently).***

It stands to reason that information about CLHIO and its services would be of most help to consumers before they proceed with a complaint to their insurer; would be of significant help if received soon after the complaint has been rejected; and would be of little or no help if received long thereafter or after the expiry of a relevant limitation period.

Presently, insurance companies are required to inform consumers in writing of the existence of CLHIO through the final letter of denial that insurers send to the insured. One person whom I consulted estimated that, while larger companies comply with this obligation, overall, only 75% of companies comply.

In light of the principle that CLHIO should not take jurisdiction over a complaint until the relevant insurance company has been given an opportunity to resolve it internally, it makes sense to tie the “final letter of denial” to the obligation to inform. However, there are important consequences associated with choosing the letter of denial as the only point at which insurers are obliged to inform their clients of the CLHIO.

Firstly, one of the functions of CLHIO is to assist callers in presenting their concerns to insurers in an effective way. If consumers are not informed about the existence of CLHIO until after they have presented their case and been denied, the opportunity for CLHIO to contribute to education and problem-solving at an early juncture is lost. Secondly, to the extent that the delay in learning about the CLHIO contributes to a lengthening of the conflict resolution process, there is inefficiency. Thirdly, if a company purposely or inadvertently neglects to inform a consumer about CLHIO in the denial letter, there is no other insurer-linked obligation to communicate.

For these reasons, I recommend that member companies be required to advise consumers in writing of CLHIO's services and contact information at three points of time, as indicated in the recommendation above. These two additional notifications should increase awareness of CLHIO, without requiring additional mailing costs. This recommendation is not intended to affect the current mandate of insurance companies to attempt resolution of complaints before the formal complaint handling procedures of CLHIO are instigated.

I understand that GIO requests its member companies to send out a notice about GIO's services at the thirty and sixty day marks if an impasse remains and, if no resolution

materializes, at the time of the final denial letter. It should be noted that CLHIO does not have the authority to compel member companies to comply with this requirement or any other that it might deem necessary to fulfill its mandate. If members do not comply voluntarily with this requirement (or others), CLHIO may have to engage the assistance of the regulators, who are in a position to compel adherence through their regulating authority.

3.2.3 Additional Sources of Information about CLHIO

Recommendation # 21:

Promote greater awareness of CLHIO and its services by requesting that organizations such as the following provide information:

- ***employers (through their industry associations) and unions (through their provincial and national associations);***
- ***independent agents who sell the products of member companies (and their industry associations); and***
- ***federal and provincial regulators.***

Placing the obligation to notify consumers about CLHIO upon insurance companies makes good sense, given that they have direct contact with their insureds, who may have a complaint about company services or products. This is the rationale for the recommendation in section 3.2.2. There are also other ways in which awareness could be improved through communication.

With respect to group insurance,³⁷ I recommend that CLHIO explore ways in which to promote greater awareness of CLHIO with employers (through their industry associations) and unions (through their provincial and national associations).

I also recommend that CLHIO contact independent agents and their industry associations and negotiate an undertaking that they will advise consumers of CLHIO's services and contact information at the point in time that they forward a policy to the consumer or when they receive any complaint in relation to the policy.

The regulators are also an important source of referrals to CLHIO. My discussions with regulators confirmed that they will consider informing consumers about the dispute resolution processes of the insurance companies and CLHIO. However, in some jurisdictions, there is reticence to do so. The primary reasons for regulators' reticence relate to not receiving feedback as to whether complaints were resolved and concerns about the ability of CLHIO to effect a resolution. To increase the incidence of referrals, I recommend that CLHIO pursue agreement on an information-sharing protocol with the regulators and that CLHIO strengthen its relationship with regulators.

³⁷ An employer that is self-insured and does its own administration would not be a member of CLHIO; hence, its employees would not have access to all of CLHIO's services.

3.2.4 CLHIO Communications

Recommendation # 22:

Explore technological means to enhance the link between key words and CLHIO's website and consider other means of enhancing communication about CLHIO and its services.

In this age of computers, the Internet provides an excellent vehicle for providing information on CLHIO's mandate and services. CLHIO currently operates a website that contains useful information. However, my efforts to find the website through key words has led me to the conclusion that the path to the website could be improved. I put myself in the shoes of a consumer who had a concern about a life or health insurance policy, but did not know the full name or acronym of CLHIO. I then "googled" (Canada only), using various key words.

When I entered "complaint + insurance company", CLHIO was the eleventh site on the list. GIO was first; the Consumers' Association of Canada was second, and the Financial Services Commission of Ontario ("FSCO") was third. A number of the ten sites that preceded CLHIO's contained links to, or information about, CLHIO. When "complaint + insurance company + life insurance" were entered, CLHIO was twenty-fifth on the list. Perhaps predictably, when I used "health insurance + ombuds", CLHIO appeared as the second site. Curiously, though, "life insurance + ombuds" resulted in CLHIO being thirty-fourth.

Consumers who seek Internet-based information about health and life insurance complaint mechanisms should be easily led to the CLHIO website. It is likely that internet-based research will be increasingly used by insureds. To better respond to this kind of consumer-initiated search for information, I recommend that CLHIO explore technological means to enhance connections between key words and CLHIO's website. I understand that GIO hired a firm to accomplish this goal. Interestingly, GIO surfaced as the first site when I entered "complaint + insurance company."

I also recommend that CLHIO consider means other than its website for communicating more broadly about its mandate and services. It could, for example, consider making brochures available through libraries and government offices.

3.2.5 Advertising

Recommendation # 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 that they sponsor.

There is, of course, the prospect of advertising in print, on television or radio, or elsewhere. This would be very expensive, however, unless done at low or no cost through community or government programs. I recommend that CLHIO consider the utility of advertising as a means of increasing awareness and encourage its member companies to include information on CLHIO in advertising or other communications they sponsor.

3.2.6 Community Sources

Recommendation # 24:

Canvass opportunities for spreading awareness through governmental, professional, and community organizations.

I also recommend that CLHIO canvass opportunities for spreading awareness through governmental, organizational, and community organizations. By way of example, one opportunity for increasing awareness is to ensure that the “211” telephone service³⁸ is aware of CLHIO. When I called and asked where I could file a complaint about a health or life insurance company, I was referred to the Consumer Protection Branch in an Ontario Ministry. When I called that number and accessed an automated system, there was no link to insurance-related complaints.

3.2.7 Organization’s Name

Recommendation # 25:

Rename the Canadian Life and Health Insurance OmbudService to one that is more distinctive.

Proceeding on the assumption that there is a low level of awareness of the CLHIO, I would recommend that the Board change the name of the organization. It would be opportune to adopt the new name before embarking on an awareness campaign so that the new name could be successfully linked to the services described.

³⁸ The “211” telephone service is a “find help” service provided at no cost to consumers.

The reasons for recommending a new name are these:

- the current name and acronym are cumbersome and challenging to remember; and
- the current name is almost identical to the trade association's and this causes confusion.

Ideas for the new name include:

- Life and Health Ombuds/Ombudsman/OmbudService (LHO), which would parallel GIO;
- Life and Health Ombuds/Ombudsman/OmbudService for Canada (LHOC);
- Life and Health Insurance Ombuds/Ombudsman/OmbudService (LHIO); and
- Ombuds/Ombudsman/OmbudService for Life and Health Insurance (OLHI), which would parallel OBSI.

3.2.8 Ombuds Name

Recommendation # 26:

Negotiate with member companies with a view to reserving the term “Ombuds” for CLHIO and re-titling company Ombuds to “Consumer Complaints Officer.”

Adding to the confusion is the fact that many insurance companies – especially the larger ones – use the title “Ombudsman” (or a variation thereon) to describe the role of the employee who attempts to resolve complaints that may ultimately go to the CLHIO. Understandably, consumers may be confused about who does what.

The Customer Satisfaction Survey commissioned by CLHIO disclosed that some consumers who accessed CLHIO thought that they were talking to the insurance company. It is also possible that consumers sent to member companies' Ombuds, may mistakenly think they are talking to the independent Ombuds. This potential for confusion leads to the concern that consumers who have already received a negative response from a company Ombuds may avoid contacting CLHIO because of their mistaken impression that they are one and the same.³⁹

In my view, it would be preferable if insurance companies used a title such as “Consumer Complaints Officer” (or a similar title) and “Ombuds” was reserved for CLHIO.

³⁹ Another example of how challenging it is to clearly explain the company Ombuds/CLHIO complaint-handling processes comes from the website of the Financial Consumer Agency of Canada. It provides information on how to make complaints at each of the life and health insurance companies, and includes the step of contacting the company's Ombudsman. It then states “Third-party complaint-handling process for this institution” and gives contact information for CLHIO. It does not explain that CLHIO is independent of the company or indicate the circumstances under which CLHIO may be contacted. See <http://www.fcac-acfc.gc.ca>.

I recommend that this be the topic of discussion between CLHIO and member companies. The parties may wish to involve CLHIA.

3.2.9 Improvements in Accessibility

As indicated earlier in Report, CLHIO provides convenient and appropriate ways in which to interact with it. In my view, it complies with the expectations regarding service articulated in the Accessibility Guideline and in its own standards regarding clarity and courtesy.

There are a few ways in which accessibility could be improved; they are addressed in the following recommendation.

Recommendation # 27:

Improve accessibility to CLHIO's services by:

- ***allowing consumers to access CLHIO's complaint form and agreement and authorization form online, if desired;***
- ***extending the hours of telephone service from 8:00 a.m. to 7:00 p.m. on Monday through Friday; and***
- ***making arrangements to provide services to people with disabilities.***

Virtually all of CLHIO's interactions with its customers are by telephone and correspondence. Because CLHIO only maintains offices in Toronto and Montreal, and given that space there is limited, CLHIO does not hold in person meetings with customers. In the customer satisfaction survey, there was some suggestion that an additional office should be opened in Western Canada. In light of the current statistics, however, expansion of the offices is not warranted in my view. There are, however, other changes that could be made to improve accessibility and they are reflected in the first two points in the recommendation above.

CLHIO has wheelchair access at both offices but, as indicated earlier, very few consumers visit the offices. There are, however, no measures in place to address other disabilities that a customer may have.

3.3 Scope of Services

The objective of this Guideline is to “provide participating firms and their consumers with a clear understanding of the range of activities and nature of consumer complaints which will be taken up by the OmbudService.”⁴⁰ In my view, CLHIO does a very good job in this regard and is in substantial compliance. In this section, I address each of the Implementation Guidelines and offer two recommendations referable to them.

3.3.1 Access to Services

The first Implementation Guideline requires that the Terms of Reference should allow access to consumers of all firms that meet its membership criteria and provide similar products, regardless of the jurisdiction of incorporation and regardless of the firms’ membership in any particular industry association.

CLHIO will talk to consumers about any life and health insurance product or service – even if the firm is not a member of CLHIO. However, it will not go as far as to investigate the matter unless the product or service pertains to a member company.

Membership in CLHIO is not dependent upon the jurisdiction of incorporation. Most of the member companies are federally regulated; however, some are regulated provincially.⁴¹ It has been estimated that 99% of Canadian life and health insurance companies are members of CLHIO. To close this small gap, a legislative solution would be required. Members of CLHIO do not have to be members of CLHIA, although most of them are.

3.3.2 Scope of Services

The second Implementation Guideline adds that the Terms of Reference should enable the OmbudService to deal with “substantially all complaints within a sector except where there is a compelling policy or practical reason to exclude them”⁴² or they exceed a published dollar threshold set by the Board of Directors.

CLHIO has comprehensive Terms of Reference which enable it to deal with substantially all complaints within the life and health insurance industry. The discretion given to CLHIO to choose not to deal with a complaint or to refer it elsewhere are reasonable and practical. There is no monetary threshold which applies to complaints handled by CLHIO.

3.3.3 Jurisdiction

⁴⁰ *Framework, supra* note 2 at p. 8.

⁴¹ Federally incorporated companies are required to join an OmbudService. Those that are provincially incorporated are not required to join. Consumers can turn to provincial regulators if they have complaints about provincially incorporated companies. Some provincially incorporated companies choose to join CLHIO even though they are not required to.

⁴² *Framework, supra* note 2 at p. 8.

The next Implementation Guideline endorses a policy whereby, if there is doubt as to jurisdiction in a particular case, the doubt should be resolved in favour of dealing with the complaint rather than rejecting it. If doubt exists as to CLHIO’s jurisdiction, CLHIO will handle the matter or refer it to the more appropriate body.

CLHIO has adopted a generous interpretation of its *Terms of Reference*. Its approach to complaints involving agents provides one of the best examples of its willingness to assume jurisdiction in the face of ambiguity. Because of the importance of this issue to the work of CLHIO, I offer the recommendation immediately below, which is aimed at confirming CLHIO’s jurisdiction in relation to agents. A discussion of the issue follows.

Recommendation # 28:

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

It is no longer typical that insurance agents are employees of the company for whom they sell products.⁴³ In fact, the opposite is true. Most agents today are independent and they may sell products for one or more companies.⁴⁴ I was advised during the course of this review that, currently, approximately 95% of products are sold by independents – principally insurance agents, brokers, and financial advisors. This fact led one of the people I consulted to remark that an agent is the “face of the firm.”

Consumers regularly make complaints to CLHIO that call into question the actions of independent agents. Common allegations are that an agent failed to adequately explain a particular product or misled them about it. One of the Board members identified “mis-selling” as one of the two biggest issues raised in complaints.

There is nothing in CLHIO’s mandate that gives it explicit authority to address complaints against independent agents.⁴⁵ CLHIO’s Board of Directors has taken the position that agents are within CLHIO’s jurisdiction. This approach promotes the public interest. In my view, CLHIO has a sound basis upon which to assert its jurisdiction. Ultimately, it is insurance companies which issue the policies in question. As well, it is insurance companies that grant independent agents the authority to sell their products.

When complaints involving independent agents are received, CLHIO typically contacts the insurer to which the product pertains and attempts to effect a resolution. If the company accepts the legitimacy of the complaint, it may agree to a resolution in the interest of protecting its reputation and/or it may take some action against the independent agent.

⁴³ Agents of this kind are sometimes referred to as “employer agents” or “captive agents.”

⁴⁴ The independent agents are most often insurance agents. However, financial advisors may sell life and health insurance products as well.

⁴⁵ However, I note that in s. 2 of CLHIO’s *Terms of Reference*, *infra* note 46, “complainant” is defined as “an individual Consumer of a Member or its representative making a complaint...” “Representative” may have been intended to address independent agents.

CLHIO management and staff indicated to me that insurance companies are, however, backing away from supporting consumers in these kinds of cases.

The fact that CLHIO does not have the explicit mandate to handle complaints against independent agents reveals a gap. One staff member identified this as a “basic problem” with CLHIO services. I, therefore, recommend that CLHIO consider ways in which its jurisdiction to address complaints involving independent agents could be confirmed. It would be worthwhile to obtain a legal opinion on this topic to assist in the discussion as to how to address this issue. Furthermore, if agents are to be separately covered, thought should be given as to whether they should pay fees to CLHIO.

3.3.4 Systemic or Widespread Issues

The fourth Implementation Guideline states that the Terms of Reference should include the authority to identify and investigate systemic or widespread issues that an OmbudService may find in the course of its work.

On June 18, 2008 the Board of Directors adopted an approach to Systemic Issues. Procedures relating to the handling of systemic issues have been recently added to CLHIO’s *Terms of Reference*.⁴⁶ The revised document was shared with the regulators and CLHIA and was published on CLHIO’s website. CLHIO’s approach applies to “systemic” issues which are defined to include issues within a company that affect more than one individual and issues that go beyond a company and are widespread in the industry.

3.3.5 Beyond Mandate

Where a complaint is not accepted because it is beyond an OmbudService’s Terms of Reference, the fifth Implementation Guideline states that the organization should inform the consumer of that fact, with a full explanation where requested.

Consumers are advised orally or in writing, as appropriate, if the subject matter of their complaint is outside the mandate of CLHIO.

3.3.6 Assistance to Consumer

The sixth Implementation Guideline states that consumers should be provided with assistance to register their complaint, and to articulate it if necessary. They should also be guided to agencies that could help them if their complaint is outside the mandate of the OmbudService.

CLHIO provides assistance to consumers to help them frame their complaint before it is taken to insurance companies. They provide information about the dispute resolution systems in member companies and CLHIO. And where another body has jurisdiction, CLHIO provides consumers with appropriate referrals.

3.3.7 Consultation on Terms of Reference

⁴⁶ CLHIO, *Terms of Reference*, July, 2008 [hereinafter “*Terms of Reference*”], ss. 16-21 at pp. 8-9.

Recommendation # 29:

Develop a mechanism that allows for consultation with regulators, industry, and consumers.

The final Implementation Guideline on “Scope of Services” states that changes to Terms of Reference should be preceded by consultation with “appropriate stakeholders” and the DR Committee. In my view, it would be appropriate for CLHIO to engage in consultation prior to all significant changes to its policies and procedures. This would increase transparency and, potentially, contribute to the quality of changes.

CLHIO has an existing practice of consulting with CLHIA. CLHIO’s draft procedures regarding systemic issues, for example, were provided to CLHIA prior to finalization. CLHIO has also been meeting with the FSON Joint Committee and DR Committee on a regular basis. All these existing practices of consultation should continue. There is an obvious gap, however, in respect of consumers. I, therefore, recommend that CLHIO’s consultation process be comprehensive and include consumers as well as regulators and industry. I understand that it may be difficult to locate the right group to represent the interests of consumers. However, I think it is important to do so.

3.4 Fairness

According to the *Framework*, the objectives of the Fairness Guideline are to “ensure that (a) the OmbudService approaches its work in respect of consumer complaints and makes its recommendations by reference to the standard of what is fair to both the firm and the consumer in the circumstances, and (b) that the processes employed by the OmbudService are demonstrably fair to both parties.”⁴⁷

3.4.1 Legalistic Approach

The first Implementation Guideline asks OmbudServices to guard against using an unduly legalistic approach to complaint resolution. As it notes, the OmbudServices were not intended to provide a parallel Court system. CLHIO also has a standard which commits it to providing fairness and impartiality in its services.

It is my impression that CLHIO staff rely heavily on the wording of contracts and common industry practices in providing guidance to the parties. While they intend to be impartial vis-à-vis the consumer and industry, their industry experience may unconsciously cause them to take a legalistic approach. Most often, the positions taken by member companies rely on legal entitlements and this, too, encourages a legalistic approach.

⁴⁷ *Framework*, *supra* note 2 at p. 10.

Interestingly, it is the Senior Adjudicative Officer who appears to take the broadest approach in his work.

In my view, there is room for CLHIO to make a shift towards a conflict resolution system that provides a greater number of opportunities for interest-based solutions that do not depend exclusively on the legal merits of a case. Recommendations pertaining to these opportunities are provided elsewhere in this Report. In my view, those recommendations will also support CLHIO's commitment to acting in a fair and impartial manner.

3.4.2 Clear Fairness Standard

Recommendation # 30:

Develop a clear fairness standard that is harmonized across the OmbudServices that comprise FSON and is approved by CLHIO's Board of Directors.

The recommendation immediately above reflects the wording of the second Implementation Guideline relating to fairness. The fairness standard that is currently used by CLHIO is described in connection with CLHIO's "Fairness and Impartiality" standard. The standard states that "all decisions made by the CLHIO are based on factual information gathered during the complaint investigations." This standard was approved by the Board of Directors in 2007 but has not yet been harmonized by FSON.

3.4.3 Impartial Procedures

The last Implementation Guideline offered in connection with the Framework's Fairness standard speaks to the importance of having impartial procedures which provide a fair and balanced opportunity for both the firm and the consumer to present documents and other information to the OmbudService. I am satisfied that CLHIO complies with this Implementation Guideline in the following ways: both parties are encouraged to provide complete documentation, both are advised of the position of the other party, and both are given the opportunity to respond. However, there is an improvement, reflected in the recommendation below, that would support the fairness doctrine and improve the quality of dispute resolution services provided by CLHIO.

Recommendation # 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.

Most of the insurance companies co-operate by providing the information that is requested of them by CLHIO staff. It has happened, however, that an insurer has refused to

provide its complete file. CLHIO will not require the whole file in every case. However, when a file is deemed necessary by an OmbudService Officer, the Executive Director, or a Senior Adjudicative Officer, I recommend that insurance companies be required to provide it. Access to all relevant information is essential if professional investigations and meaningful conciliations are to be done. Information in the file may be crucial to CLHIO's assessment of a case; if access to it is thwarted, CLHIO will not be able to fulfill the role expected of it.

The *Framework* makes it clear that firms are expected to cooperate and, if they do not, that fact should be publicly disclosed. Providing access to complete files is one aspect of cooperation that should be pursued. I believe that CLHIO could provide more effective dispute resolution services if it routinely reviewed members' file material.

3.5 Methods and Remedies

In the words of the Framework, the objectives of the Guideline regarding Methods and Remedies are to articulate (a) the nature of dispute resolution methods to be employed by the OmbudService, (b) the result expected by a consumer from complaint resolution work of the OmbudService..., and (c) the consequences which should follow from non-compliance by the firm with the remedy recommended or non-cooperation by the firm with the inquiries of the OmbudService."⁴⁸

3.5.1 Complaint Resolution Methods

The first Implementation Guideline stresses the importance of "clearly stated complaint resolution methods which are well-suited to the nature of the dispute..."⁴⁹ It recognizes that a variety of methods may be employed in attempting to resolve the same dispute. In conflict resolution parlance, it is important to "fit the forum to the fuss."⁵⁰ In my view, there is merit in sequencing interventions. It makes sense, for example, to have a Telephone Counselor speak to a consumer before deciding whether to pass the matter to a Complaints Counsellor.

I offer a number of recommendations below related to improvement in the area of processes and roles. In short, the recommendations are to:

- Consider restricting services to those that are central to CLHIO's mandate;
- Develop up-to-date role descriptions;
- Make optimal use of dispute resolution methods;
- Tie the titles of staff to the work they actually perform; and
- Streamline roles and responsibilities.

⁴⁸ *Framework*, *supra* note 2 at p. 11.

⁴⁹ *Ibid.*

⁵⁰ See Frank Sander and Stephen Goldberg, "Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure" (January, 1994) 10 *Negotiation J.* at 49.

Services Central to Mandate

Recommendation # 32:

Review the appropriateness of retaining the CAC functions that are not closely connected to complaints.

Most OmbudServices restrict their mandate to complaint-handling. I question the appropriateness of retaining the CAC functions that have no obvious connection to complaint-handling, such as giving consumers the names and addresses of consolidated companies, helping consumers locate their life insurance policies, and providing information as to which companies offer certain products. As valuable as these services are and despite how well they are performed by CLHIO staff, they are not “complaint resolution methods” as contemplated by the Guideline. Furthermore, I believe that they fall outside CLHIO’s mandate as they promote and support the industry. In my view, this kind of information should be available from CLHIA or a government entity.

I, therefore, recommend that CLHIO review the appropriateness of retaining the CAC functions that are not closely connected to complaints. Those functions of Telephone Counsellors that relate to dispute prevention, information about dispute resolution processes, and guidance about filing complaints should be retained.

Role Descriptions

Recommendation # 33:

Develop up-to-date role descriptions that include job responsibilities and the qualifications required for the role.

The CLHIO job descriptions that I reviewed were not written in a consistent format and it is not clear whether they accurately reflect the reality of the way in which roles are currently performed. The job descriptions should be revisited, whether or not any changes to roles and responsibilities are made.

Dispute Resolution Methods

Recommendation # 34:

Make optimal use of the dispute resolution methods that are available.

As noted above, at CLHIO, there is merit in sequencing dispute resolution methods.⁵¹ Simple matters are best handled at the “front end” through the provision of information and/or guidance. More complex cases require more sophisticated methods, which may involve one or more of negotiation, facilitation, mediation, conciliation, neutral evaluation, investigation, and non-binding recommendation. I have a number of comments to make in relation to the recommendation above.

Mediation

Currently, Complaints Counsellors informally facilitate settlements between parties and OmbudService Officers shuttle between parties during their conciliation activities. However, the parties are rarely (if ever) brought together by phone or in person – to engage in a facilitated negotiation in an attempt to resolve issues. In my opinion, mediation could have a positive effect on resolution.

Rights-based mediation, and interest-based mediation in particular, can be effective in moving parties to consensual agreements that result in mutual gain. Cases would not necessarily result in either the company’s position or the consumer’s position being confirmed. The parties would be at liberty to craft an agreement that met their unique interests.

To test the potential effectiveness of mediation at CLHIO, I suggest that a pilot project be undertaken. Wherever possible, joint discussions between the consumer and member company – facilitated by CLHIO staff – should be held. In complex cases (such as those of the kind currently referred to OmbudService Officers), an effort should be made to have at least one session in which all the participants attend in person. The pilot would best be started after training has been conducted and it should be evaluated at the end of the pilot project.

Joint discussions through mediation would provide an additional tool for potential resolution. This tool may be especially helpful when there is some uncertainty about how a court would rule on a potential claim or where a corporate reputational interest is at stake.

Investigation

Although OmbudService Officers are authorized to investigate complaints, the method that they use is rather unique. I mention this because consumers may be under the impression that the investigation being done by CLHIO is more rigorous than it actually is. By way of example, people who participate in the investigate are not requested to undertake to tell the truth; the OmbudService Officer does not conduct face-to-face interviews of parties and non-party witnesses; and it is not clear what standard of proof or evidentiary standard is used.

⁵¹ The term “dispute resolution methods” is used here because it is used in the Guideline. The “methods” described in this Report (facilitation, mediation, etc.) are often referred to in alternative dispute resolution (“ADR”) literature as “processes” or “interventions.”

My review leads me to believe that the OmbudService Officers conduct a review, which is based on the information that the parties provide to them. The review is something less than an investigation. They use the results of their review to evaluate the respective merits of each party's case. OmbudService Officers may share their evaluation with the parties, as they conciliate, in an effort to promote resolution. In the interests of transparency, CLHIO should provide consumers with greater clarity as to what its investigation method involves.

Job Titles

Recommendation # 35:

Change the titles of staff to more accurately reflect the essential nature of the work that they do.

CLHIO has undergone many organizational changes since it was first established. The titles attached to various roles were either inherited from CLHIA or created by CLHIO. In my view, the titles should be a more accurate reflection of the essential nature of the work performed by those in the various roles. The revisions suggested below are based on the work that is currently performed. The new titles would provide consumers with greater clarity and a better sense of what they can expect from the assistance of a person in the role. If the roles are reconfigured in the future, the titles should be changed accordingly.

To better match titles with the essence of the current roles, I suggest that the titles be changed as follows.

- *Telephone Counsellor* → *Enquiries Officer*
The fact that those in this role respond to enquiries is more important, in my view, than the fact that the information they provide is generally transmitted by telephone. The title "Counsellor" is vague and may be misleading. Callers may associate the term "Counsellor" with those who provide advice (e.g., legal counsel) or support (e.g., therapist). The term "Officer" avoids that potential confusion and, as noted below, is generic enough to be used for other roles.
- *Complaints Counsellor* → *Complaints Officer*
"Officer" is suggested in lieu of "Counsellor" for the reason provided above. Because the staff in this role handle complaints, that term is retained.
- *OmbudService Officer* → *Conciliation Officer* or *Dispute Resolution Officer*
The essence of the role of the current OmbudService Officer is to conduct an investigation and try to effect a resolution of the complaint. The OmbudService Officer does not produce a non-binding recommendation – the quintessential hallmark of an OmbudService. For those reasons, I suggest that the title be changed to "Conciliation Officer" if the emphasis is meant to be on conciliation or "Dispute Resolution Officer" if the emphasis is more on investigation or a combination of investigation, neutral evaluation, and

conciliation. The latter title is commonly used in conflict resolution programs for those performing roles similar to the current OmbudService Officers.

- *Senior Adjudicative Officer* → *Senior Ombuds Officer, Ombuds, or Ombudsman*
In contrast to the current OmbudService Officer, the Senior Adjudicative Officer has the authority to render a non-binding recommendation. Therefore, it would be sensible to include “Ombuds” in the title. An adjudicator renders a final and binding decision – which incumbents in this role do not have the authority to do. Accordingly, the word “Adjudicative” should be avoided. “Senior Ombuds Officer”, “Ombuds”, or “Ombudsman” are offered as alternative suggested titles for this role.

Streamlining

Recommendation # 36:

Consider options to improve effectiveness and efficiency through streamlining roles and responsibilities.

I am of the view that there is potential to improve the effectiveness and efficiency of CLHIO by reconfiguring roles and responsibilities. There is, for example, overlap in the roles of the Complaints Counsellor and OmbudService Officer. Both handle complaints and try to resolve them. OmbudService Officers have the additional authority to conduct an investigation. After the training contemplated in this Report has been completed, I recommend that CLHIO consider merging the roles of Complaints Counsellor and OmbudService Officer. If this is done, I would suggest the new title be “Conciliation Officer” or “Dispute Resolution Officer.”

3.5.2 Timelines

The second Implementation Guideline addresses the importance for “practical time frames for the completion of relevant milestones”⁵² that are communicated to firms and consumers and that are sufficiently flexible. CLHIO does not presently have comprehensive published protocols relating to timelines. The recommendations below would remedy that gap.

⁵² *Framework, supra* note 2 at p. 11.

Initial Timeline

Recommendation # 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 and any further material information or documentation that may be reasonably required by the insurance company. Permit CLHIO to extend this time limit in exceptional circumstances in accordance with established Guidelines.

CLHIO does not currently have the official “jurisdiction” to address a complaint until the relevant insurance company has had an opportunity to conduct its own review and deliver its final response to a consumer. This emphasis on “industry first” is in keeping with sound conflict management principles which encourage conflict resolution as close to the source as possible. However, no limits are placed on the length of time a company may take to complete its review and communicate with the consumer. This may have adverse consequences for the consumer.

Accordingly, CLHIO should assume jurisdiction at the earlier of (a) the date that the consumer contacts the CLHIO, after having received a final response from the insurer; or, (b) a date that is more than sixty days after the consumer provided the insurer with a written complaint and any further material information or documentation that was reasonably required by the insurer. In exceptional circumstances (such as a complicated long-term disability claim requiring multiple specialists’ opinions), CLHIO may extend the timelines if the insurer needs the information to make a reasoned decision. That same information would likely be required by CLHIO, if it intervenes at a later date.

It is in the joint interest of insurance companies, consumers, and CLHIO to have life and health insurance concerns handled in a timely way. This recommendation would promote that joint interest. I also note that FSCO advises consumers that they have the right to have their complaint reviewed by a third party “if [the] company is unable to resolve the complaint within a reasonable time.”⁵³

External Benchmarks

Recommendation # 38:

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

⁵³ See FSCO, “What to do if You Have an Insurance Complaint,” at www.fSCO.gov.on.ca.

In rare instances insurance companies will ignore CLHIO's request for a response. It can take companies up to eight weeks to provide a response to CLHIO – and that may only come after a number of follow-up calls. Complaint-handling programs typically impose time limits to promote efficiency and consistency in how parties are treated. Consumers should also be obliged to provide information in a timely way. I, therefore, recommend that CLHIO establish benchmarks for the receipt of responses and other information from consumers and insurance companies, publish those benchmarks, and create a mechanism for monitoring them.

Internal Benchmarks

Recommendation # 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.

Currently, the published timeliness standard promises that CLHIO will respond promptly to consumer enquiries and complaints; that telephone calls will be answered immediately; and telephone, fax, and e-mail messages will be returned within one business day. There are, however, no published benchmarks (or milestones) for any other steps.

To increase consistency of service, I recommend that realistic benchmarks should be established (including the completion of typical steps in the information and complaint handling processes, and an overall completion period). To promote transparency and stakeholder awareness, I recommend that these benchmarks be published on CLHIO's website and be included in any internal documentation on the topic of standards. To monitor compliance with the benchmarks, I further recommend that CLHIO develop a mechanism which would provide management with an early indication of cases that fall outside the timelines. This would allow for a determination as to whether or not extended timelines were warranted.

In order to be able to properly monitor timelines, CLHIO should use written communication vehicles for interacting with consumers and insurance companies. Letters should be used for transmitting any important or confidential information, given that e-mail is not as professional a form of communication and is not secure.

3.5.3 Alternative to Legal Process

The third Implementation Guideline associated with Methods and Remedies identifies provisions that should be agreed to by firms and consumers and reduced to writing.

(a) Confidentiality, Admissibility, and Compellability

The Implementation Guideline states, firstly, that the parties should confirm in writing that the OmbudService's files and work are confidential, not admissible in legal proceedings, and that staff will not be required to testify in legal proceedings.

Redraft Documents

Recommendation # 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.

CLHIO's *Terms of Reference* address the issues of confidentiality, admissibility, and compellability.⁵⁴ However, they do not meet all of the Implementation Guideline's criteria. For example, the discussions and correspondence of Telephone Counsellors and Complaints Counsellors are not specifically protected and they are not excluded from being compelled to testify. The issues are also covered in the *Authorization and Agreement for CLHIO Dispute Resolution Service Form* ("*Authorization and Agreement Form*"). However, the terms in that form are not fully consistent with the *Terms of Reference*. The recommendation made above is intended to rationalize the language used by CLHIO and incorporate all of the points made in the relevant Implementation Guideline.

Obtain Members' Signatures

Recommendation # 41:

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

The *Authorization and Agreement* Form currently requires the name and signature of the Complainant, but only the name of the insurance company. To comply with the Implementation Guideline's suggestion that the parties agree in writing, a signature on behalf of the company needs to be obtained as well, so companies will be bound by the same provisions with respect to limitations on the use of information obtained through the CLHIO processes.

⁵⁴ *Terms of Reference*, *supra* note 46, s. 25 at p. 10.

Obtain Written Consent from Consumer

Recommendation # 42:

Require prior written consent from the consumer before contacting an insurance company to discuss that consumer's concerns.

CLHIO's current procedures dictate that the consumer must sign and return an *Authorization and Agreement* form before an OmbudService Officer contacts the insurer as part of an investigation. Complaints Counsellors may ask for oral consent before contacting an insurer, but they do not request written authorization.

In my view, the rationale for requiring written authorization does not depend upon who is contacting the insurer. Rather, it depends upon what is to be discussed. Ombuds Officers and Complaints Counsellors deal with the same kind of information. While it could be argued that the consumer has provided implied consent by contacting CLHIO, given the sensitive medical information that is typically involved, written authorization should be obtained by any representative of CLHIO who intends to contact an insurer.

This focus on confidentiality is particularly important given the assurances of confidentiality that are contained in the *CLHIO Privacy Policy*.⁵⁵ It states, in part: "CLHIO will not discuss a consumer's concern or complaint with any third-party except with the consumer's consent."

Retain Written Consent

Recommendation # 43:

Retain the original written consent of the consumer in the main file kept in Toronto and keep a copy in any duplicate file.

My review of the files disclosed that a number of OmbudService Officers' files did not contain any evidence of receipt of written authorization from the consumer. It is possible that the document was obtained and inadvertently destroyed or misfiled; alternatively, it is possible that it was never obtained. An original copy of the authorization should be kept in the main file kept in Toronto, and a copy kept in any duplicate file. Given the importance of this document, I suggest that it be readily accessible.

⁵⁵ *CLHIO Privacy Policy*, contained in the 2006-2007 *Annual Review* at pp. 31-32.

(b) Limitation Periods

Secondly, this Implementation Guideline states that the parties should confirm in writing that they will suspend the application of any limitation period until the OmbudService has had an opportunity to attempt to resolve the dispute, where the law permits such.

Recommendation # 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.

Section 14 of CLHIO's *Terms of Reference* indicate that suspension of a limitations period promotes recourse to alternative dispute resolution. I understand that most, but not all, member companies have provided a written undertaking to suspend. Some, however, have taken the position that they have no legal obligation to do so and, on that basis, they have refused. Suspension is especially important in the current system which does not impose time limits on the member companies' obligation to complete their role in the complaints process. Even if time limits are imposed, in my view, the suspension of any relevant limitation period is an indicator of good faith on the part of the member company. I therefore recommend that CLHIO make a concerted effort to obtain the agreement of all member companies to suspension of relevant limitation periods.

CLHIO should consider whether a blanket statement by a member company is sufficient, or whether the language suspending limitation periods should appear in every *Authorization and Agreement* document signed by a consumer.

3.5.4 Outcomes

The fourth Implementation Guideline suggests that the complaint resolution methods should lead to either a result acceptable to both parties or a written recommendation for the resolution of the complaint. At CLHIO, complaints may be resolved through the intervention of a Complaints Counsellor or OmbudService Officer. Complaints that remain unresolved may be referred to the Senior Adjudicative Officer, who is empowered to provide a written non-binding recommendation as to how the complaint should be dealt with.

My only reservations about CLHIO's compliance with this Implementation Guideline relates to how consumers are referred to OmbudService Officers and the Senior Adjudicative Officer. The recommendations immediately below address my concern.

Referrals to OmbudService Officers

Recommendation # 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 the training program offered to all staff.***

Who makes the decision to send complaints from a Complaints Officer to an Ombuds Officer within CLHIO? What criteria are used in making that decision? The answers to those questions are not altogether clear. In fact, one of the OmbudService Officers admitted to “not being totally familiar with CLHIO procedures” – including the decision-making process for having cases referred to Ombuds Officers.

There are ambiguities and discrepancies in CLHIO publications as to whether or not complaints that remain unresolved after the Complaints Counsellor stage are automatically moved to the next stage. It appears that complaints are referred to an OmbudService Officer only when a Complaints Counsellor feels that the consumer has a credible argument which the insurer does not accept. Further, referrals to the OmbudService Officer have required the prior approval of the General Manager. This uncertainty should be clarified by taking the steps recommended above.

Referrals to Senior Adjudicative Officer(s)

Recommendation # 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 the training program offered to all staff.***

Referrals to the Senior Adjudicative Officer have also required the prior approval of the General Manager. As with referrals to the OmbudService Officer, it is not clear what criteria are used for referring complaints to the Senior Adjudicative Officer. Therefore, the recommendation above parallels what was recommended for referrals to the OmbudService Officer.

3.5.5 Competent Staff and Consultants

The fifth Implementation Guideline obliges OmbudServices to engage staff and consultants who are “competent and well trained, with expertise suitable to the nature of the complaint in question.”⁵⁶ This Implementation Guideline prompts me to make the five recommendations immediately below.

Recruitment Procedures and Practices

Recommendation # 47:

Develop written recruitment procedures for future recruitment covering matters including hiring criteria, advertising for positions, screening applications, checking references, retaining letters of offer, and retaining letters of employment/retainer, and adopt consistent recruitment practices that are in compliance with the procedures.

CLHIO acquired most of its staff (employees and independent contractors) through transfers from CLHIA or through invitations by management to join the organization. Of course, this does not mean that they lack the requisite qualifications or experience for the work they do.

I recognize that CLHIO is a small organization and its human resources processes should not be unduly cumbersome. Nonetheless, it is important that it have professional recruitment procedures and practices that reflect the unique nature of its mandate. Otherwise, CHLIO is vulnerable to the criticism that there is favouritism in hiring/retaining, or that people are selected for reasons that do not fully reflect the needs of the organization.

CLHIO’s mission can only be accomplished through those that work on its behalf; sound recruitment practices will ensure that excellent people continue to be recruited. By increasing transparency about how people are recruited, CLHIO should minimize or eliminate any suggestions that it has something to hide. Therefore, I recommend that CLHIO develop written recruitment procedures for future recruitment activity and that they cover, at a minimum, the matters listed in the recommendation above.

Expertise

Recommendation # 48:

Maintain insurance industry expertise as an important criterion for selection of Telephone Counsellors, Complaints Counsellors, and OmbudService Officers.

⁵⁶ *Framework, supra* note 2 at p. 12.

In terms of hiring criteria, I cannot overlook the issue that surfaced in this Review many times; namely, the question of whether staff need to have insurance industry expertise to perform their roles effectively. CLHIO's Telephone Counsellors, Complaints Counsellors, and OmbudService Officers all have considerable expertise in the insurance industry.

The arguments in favour of requiring this kind of expertise include:

- the subject matter in question is industry-specific and technical;
- without it, staff would not have sufficient credibility with customers;
- staff are much more efficient when they know the answers or where to get them; and
- staff with industry expertise may access contacts to assist in resolution efforts.

On the other hand, there are arguments against the necessity or even the wisdom of requiring insurance industry expertise. These include:

- it leads to a perception that staff are biased in favour of industry;
- even if there is no bias, staff steeped in the industry will be inclined to support industry practices and interpretations;
- generic conflict resolution skills are more important than substantive expertise; and
- industry-specific expertise can be acquired through training and on-the-job learning.

I can appreciate both sides of this argument. However, having reviewed the environment in which CLHIO operates, I have come to the conclusion that the organization is better served by having staff who, in the main, are well versed in the insurance industry and the products that the industry offers. There are some refinements on this view that I would like to offer.

Firstly, while insurance industry expertise most obviously comes from having worked for an insurer, it may be acquired in other ways; for example, having been an insurance agent. Secondly, concerns about bias can be addressed through recruitment and through performance management. Thirdly, concerns about lack of independence can be dealt with through those same means and through the conflict of interest policy. The conflict of interest policy should be amended to specify that staff cannot work on a file that relates to any insurer that they have been employed by or retained by in the previous five years, or in which they have a present personal or financial interest (such as a pension from the company). Lastly, it is my view that not all of those associated with CLHIO need to have prior insurance industry expertise. Future Board members, for example, may be recruited because of expertise in other areas. For the Senior Adjudicative Officer, the most important selection criteria may be independence, legal expertise, and reputation. And for the Executive Director, the criteria may well depend upon the evolving priorities of the organization.

Operational Procedures

Recommendation # 49:

Develop a comprehensive manual of operational procedures and share it with the staff.

As one of the members of the Board suggested, it is very important for CLHIO to have comprehensive operational procedures. They would serve the following purposes:

- promote consistency;
- provide guidance for the staff;
- serve as a basis for staff development;
- allow management to better assess performance; and
- give the Board and other stakeholders more confidence in the professionalism and accountability of the organization.

It would be helpful if the manual could include checklists associated with various steps in the CLHIO's complaint-handling processes, the benchmarks for timelines, and templates for tasks such as investigation reports and standard reports to management.

The recommendations in this Report that refer to a procedures manual are not intended to suggest that CLHIO become a rigid, bureaucratic organization. CLHIO should continue to operate in a way that is flexible and encourages innovation.

Staff Development

Recommendation # 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; and***
- ***evidentiary standards.***

CLHIO does provide training sessions for staff on insurance products. It does not, however, currently have a comprehensive staff development program for staff. My discussions with staff and my file review disclosed that staff take differing approaches to their cases and that, in some instances, there was a failure to follow prescribed CLHIO policies and procedures or a lack of rigour in the way in which cases were handled.

Accordingly, I recommend that CLHIO develop a comprehensive staff development program which covers topics such as those suggested above.

Performance Management

Recommendation # 51:

Develop a performance management system, tailored to the unique responsibilities of CLHIO staff.

CLHIO does not currently have a comprehensive performance management system for staff. This should be developed, taking into account performance measures including those suggested in this Report.

3.5.6 Settlement by Consumer

The sixth Implementation Guideline places an obligation on OmbudServices to take reasonable steps to ensure that consumers understand proposed settlement terms and that they accept them “in an atmosphere free from any reasonable impression of coercion.”⁵⁷

Recommendation # 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.

CLHIO’s *Consumer Information and Authorization* document suggests that consumers may wish to get legal advice about how working with CLHIO could affect their legal rights or if they are concerned about the effect of limitation periods. However, this document is not sent to consumers until they are at the OmbudService Officer stage. It would be more helpful for consumers to receive this information as early as possible in the process. The suggestion to consider legal advice could also be added to the website.

Moreover, there is no suggestion in the *Consumer Information and Authorization* document that consumers consider obtaining legal advice before signing any settlement document. The execution of a settlement document and any accompanying Release may involve matters of significant importance to the consumer. As there is no limit on the quantum of monetary remedies, the financial implications may be serious.

I have no evidence to suggest that consumers are coerced by CLHIO staff or by insurance companies. However, given the power differentials involved and the fact that

⁵⁷ *Ibid.* at p. 13.

insurance companies typically draft settlement documents and Releases, I recommend that CLHIO publications should advise consumers of their right to obtain independent legal advice before entering into a binding settlement. I further recommend that OmbudService staff (and the Senior Adjudicative Officer if he is involved in a settlement) should put that option to consumers in writing.

3.5.7 Non-Binding Recommendation

The seventh Implementation Guideline states that a recommendation of an OmbudService should specify a proposed remedy or remedies suitable to the nature of the dispute, which may include a non-binding recommendation for financial restitution for direct loss and/or a recommendation for other action, which may include compensation for non-financial loss.

CLHIO's Senior Adjudicative Officer has the authority to make a non-binding recommendation containing whatever terms are deemed suitable in the circumstances of the case.

3.5.8 Public Disclosure re: Firm's Actions

The eighth Implementation Guideline relating to Methods and Outcomes deals with public disclosures regarding firm's actions. The Guideline states that OmbudServices should publicly disclose a firm's failure to cooperate with an OmbudService in an inquiry or investigation within a reasonable time or its failure to comply with a recommendation within a reasonable time. It adds that the disclosure should be done in a way that preserves the confidentiality of the consumer.

Recommendation # 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.

CLHIO's *Terms of Reference* address the issue of public disclosure in the following way: "If the Member does not accept the Non-Binding Recommendation(s) of the Senior Adjudicative Officer, the Executive Director shall make that information public."⁵⁸ The *Terms of Reference*, however, do not extend the disclosure to non-cooperation by a member company. They also do not provide any guidance as to the manner in which the information should be made public. I recommend that the *Terms of Reference* be amended to reflect a Protocol which is in compliance with all aspects of the *Framework's* Implementation Guideline.

⁵⁸ *Terms of Reference*, *supra* note 46, s. 39 at p. 13.

3.5.9 Application to Systemic or Widespread Issues

The final Implementation Guideline suggests that the methods and remedies applicable to individual complaints should be equally applicable to systemic and widespread issues. As noted earlier, CLHIO's Board of Directors endorsed an approach to systemic issues which is now contained in CLHIO's Terms of Reference.⁵⁹ Under CLHIO's approach, the methods and remedies applicable to systemic issues supplement those that pertain to individual complaints.

3.6 Accountability and Transparency

As set out in the *Framework*, the objectives of this Guideline are to ensure accountability and transparency. OmbudServices must be accountable to the public interest goals that they were established to achieve; as well, they must be accountable to the regulators in relation to their reasonable information needs regarding consumer complaint-handling. The Framework articulates five Implementation Guidelines to support the Accountability and Transparency Guideline. These are reviewed in turn.

3.6.1 Annual Report

The Implementation Guideline suggests that OmbudServices publish, and widely circulate, an annual report which includes information in its dispute resolution process.

CLHIO publishes an *Annual Review* which reports on its activities over the past fiscal year. The Annual Reviews contain information about complaint-handling processes, case studies, and statistics. CLHIO has published five *Annual Reviews* to date. The Annual Reviews are generally published in the Fall, prior to the annual general meeting. Annual Reviews are published on the CLHIO website and are widely distributed to member firms, Members of Parliament and their constituency offices, and regulators. Consumers are provided with a copy upon request. In my view, CLHIO has fully complied with this Implementation Guideline.

3.6.2 Consultation with Stakeholders

In relation to the "Accountability and Transparency" Guideline, the *Framework* also states that OmbudServices should make periodic efforts to consult with stakeholders, including firms and consumer organizations, to "discuss its success in fulfilling its mission and to identify opportunities for improvement."⁶⁰

⁵⁹ *Ibid.*, ss. 16-21 at pp. 8-9.

⁶⁰ *Framework*, *supra* note 2 at p. 13.

Recommendation # 54:

Develop a three year consultation plan which commits to regular discussions with stakeholders, including consumer organizations, member companies, and regulators.

CLHIO's General Manager met, as required, with CLHIA's Committee on the OmbudService ("Committee"), an advisory committee that was formed in 2003 to provide input from industry on matters of common interest. The Committee comprises senior representatives from the life and health insurance industry.

CLHIO has also made presentations every two to three years to the industry Consumer Complaints Officers and/or Compliance Officers to report on CLHIO dispute resolution activities.

CLHIO also meets regularly, along with OBSI and GIO, with the Standing Committee on Dispute Resolution ("DR Committee"). The next meeting is scheduled for November 27, 2008. CLHIO has also been invited to provide an annual presentation to CCIR on CLHIO activities, at which statistical overviews have been provided. The most recent presentation was made by the General Manager in the Spring of 2007. Other cross Canada meetings with life and health insurance provincial regulators have also been held.

While CLHIO has engaged in regular discussions with CLHIA, member companies, and regulators, there is a deficiency in relation to consultation with consumers. This gap, added to the fact that there is no consumer representative on the Board, demonstrates that CLHIO is not reaching out as it should to the consumer community. It thereby is missing the opportunity to obtain input from consumer organizations. In order to implement the recommendation offered immediately above, CLHIO will have to put considerable time into building relationships with consumer organizations in Canada.

3.6.3 Information Protocol

Recommendation # 55:

Continue to work with regulators to conclude a mutually acceptable Protocol on information to be provided by OmbudServices to regulators.

The Implementation Guideline on this point speaks to the need for an information protocol with regulators which will describe, in a mutually agreeable way, the nature and extent of information to be provided by the OmbudServices to the regulators. The Guideline recognizes that the Protocol should take consumer confidentiality and privacy into account and that it should be reviewed and updated on a regular basis.

This item has been discussed but the Protocol has yet to be finalized. It is important that CLHIO and the other OmbudServices continue productive discussions. I appreciate that there are a number of sensitive issues that arise in connection with balancing the legitimate interest of the regulators in getting the information it requires and the legitimate interest that CLHIO has in honouring the confidentiality of its processes.

3.6.4 Meetings with DR Committee

The fourth Implementation Guideline suggests that each OmbudService should meet on a regularly scheduled basis with the DR Committee. The purpose of the meetings is to discuss: material operating issues, governance, consistency of services and harmonization of best practices, and gaps in coverage of consumers of regulated financial services products.

CLHIO's Board has invited the DR Committee to attend its meetings. Five representatives of the DR Committee, including a person from the Secretariat, attended the Board meeting on March 4, 2008. As this involves an ongoing commitment, the Board will have to extend further invitations to the DR Committee so that meetings on a regular basis can be held. This aspect of the Accountability and Transparency Guideline has been met.

3.6.5 OmbudService Documents

The final Implementation Guideline on the subject of Accountability and Transparency relates to publishing of documents. It contemplates that OmbudServices should publish appropriate documents regarding its operating structure, including the Terms of Reference, governance practices, and its Standards.

CLHIO's *Terms of Reference*, *By-Laws*, and *Standards* are publicly available on its website. The Standards have also been set out in the *About the Canadian Life and Health Insurance OmbudService*⁶¹ brochure and the *Annual Review*⁶² which are published on the website. The *Annual Review* contains CLHIO's *Privacy Statement*. The *Framework* is also available on CLHIO's website. I recommend that all of CLHIO's policies and other documents that relate to its operating structure, governance, and standards be accessible through CLHIO's website – unless there is a legal impediment or sound public policy reason not to do so. This would include, for example, the *Conflict of Interest and Confidentiality Policy* referred to in this Report.

3.7 Third Party Evaluation

As explained in the *Framework*, the objective of the “Third Party Evaluation” Guideline is to have OmbudServices the subject of “third party evaluations on a regular basis to validate the effectiveness of the OmbudService in achieving its purpose and to identify opportunities for improvement.”⁶³

⁶¹ See CLHIO website at www.clhio.ca.

⁶² See CLHIO, *2006-2007 Annual Review* at p. 4 and CLHIO, *2005-2006 Annual Review*, inside cover.

⁶³ *Framework*, *supra* note 2 at p. 14.

The six Implementation Guidelines pertaining to “Third Party Evaluation” express the expectations about the Evaluation. I will each of them briefly.

3.7.1 Triennial Evaluation

The first Implementation Guideline obliges the Board of an OmbudService to appoint an independent evaluator to conduct a review at least every three years. I understand that CLHIO’s Board has agreed to do so. This Report represents the completion of the first review of the organization. The Guideline also states that the OmbudService should keep the DR Committee informed of the process for selecting and engaging the evaluator. I have been informed that this has been done.

3.7.2 Governance Practices and Standards

The second Implementation Guideline suggests that the OmbudService’s practices and Standards should facilitate clear and meaningful assessments of its operations as required to determine that the objectives of the Guidelines are being met. In my view, the current ten CLHIO Standards are appropriate, but they do not provide the kind of specificity that would allow for a more detailed assessment. For example, it is difficult to measure whether the staff are courteous. If the recommendations in this Report are accepted, I predict that the next evaluation will be better able to measure CLHIO’s performance. For example, if timelines are developed, the next evaluator will be able to measure any divergence from the timeliness measure.

3.7.3 Access to Materials

Access to all materials and personnel is the subject of the third Implementation Guideline. As indicated earlier, I was given full access and provided with all of the information I requested.

3.7.4 Public Interest Purpose

The fourth Implementation Guideline requires the evaluator to assess the extent to which the operations of the OmbudService have achieved its public interest purpose, having reference to the *Framework* and the working protocols and standards of the Board. The evaluator is also expected to make recommendations for improvement when shortfalls are identified. One of the regulators that I spoke to said that “delivering on the public interest is paramount” and that it requires public accountability. This Report reveals the extent to which the public interest is being served and where improvements can be made.

3.7.5 Discussion of Report by Board of Directors

The fifth Implementation Guideline suggests that the Board should discuss the Report at the meeting which follows delivery of the evaluator’s Report. I have been advised that this Report will be on the Agenda of the Board of Directors meeting scheduled for November 4, 2008.

3.7.6 Publication of Evaluator's Report

In relation to the sixth and last Implementation Guideline which suggests publication of the evaluator's Report and any response to it, I understand that the Report is to be published on the website. I was advised that the timing of publication is still under consideration. I am not aware of the Board of Directors' plans in relation to preparation of a Response.

PART FOUR: OTHER RECOMMENDATIONS

4.0 Introduction

In Part Four of this Report, I offer a number of recommendations that do not fit neatly into the examination of the Standards canvassed in Part Three. The recommendations cover topics that, like those in Part Three, are relevant to CLHIO's ultimate ability to fulfill its mandate effectively and efficiently.

4.1 Consumer Feedback

Recommendation # 56:

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

CLHIO commissioned a *Customer Satisfaction Survey* ("Survey") in January of 2007. The results were delivered in May of that year. The key concerns identified by consumers related to lack of awareness about CLHIO's services, confusion between CLHIO and the life and health insurance industry, and a perception that CLHIO was biased in favour of the insurance industry.

Because the Survey was done relatively recently, another survey was not conducted as part of this Review. I recommend that CLHIO commission an independent, in-depth Consumer Feedback Survey after any changes in policies and procedures emanating from this Review are implemented. I suggest the following in connection with the Survey:

- The survey target a sample size that is statistically relevant;
- Both quantitative and qualitative data be obtained;
- The data be analyzed in accordance with sound statistical principles and practices; and
- CLHIO be able to access, as appropriate, the raw data that is gathered in connection with the survey.

4.2 Insurance Company Contacts

Recommendation # 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.

My mandate does not extend to the examination of the complaint-handling OmbudService programs within life and health insurance companies. However, it is important to recognize that the collective complaint-handling programs of the member companies, along with CLHIO's program, comprise one system. The strength of the overall system depends on having appropriate programs in place in companies and at CLHIO.

There are obvious questions about the degree to which internal company Ombuds fulfill the requirements of a classic Ombuds. To what degree are internal Ombuds independent? Do they have a high degree of autonomy? Do they have sufficient stature and authority in the organization? Do they make effective non-binding recommendations to senior officials? The answers to these questions vary from member company to member company.

Some of those that I consulted felt that the power inherent in the company Ombuds role used to be stronger years ago than it is now. Today it is not unheard of for a company Ombuds to be a claims supervisor, for example, who may have a vested interest in supporting staff's original position on a claim. Further, CLHIO has encountered situations where the company Ombuds refers CLHIO back to the person who refused the claim in the first place. I received a number of comments from CLHIO staff about the internal company Ombuds. One person suggested that some company Ombuds are "just post offices for the business areas." Another said that most Ombuds or Complaints Officers at companies "kowtow to claims." Yet another spoke of their tendency to "farm out complaints to line departments."

This raises a significant issue as to whom CLHIO staff should speak to at insurance companies. If the internal contacts do not have the requisite degree of autonomy, authority and responsibility, CLHIO will have no realistic opportunity to engage in meaningful dispute resolution. The effectiveness of CLHIO's complaint-handling system depends, in no small measure, on the professionalism of dispute resolution processes in the member companies. Therefore, I recommend that CLHIO engage in discussions with its member insurance companies and CLHIA to set standards for the roles and responsibilities of companies' internal Ombuds or Consumer Complaints Officers.

4.3 Insurance Company Service Commitment

Recommendation # 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.

By signing a service commitment document, member companies would acknowledge the important role they play as the initial consumer contact in the current insurance industry conflict resolution model. To work as an effective system, it is important that member companies, along with CLHIO, deal with complaints in a timely fashion. Early attention to complaints increases the prospect of early resolution. By signing this Service Commitment document, companies would demonstrate their leadership in the area of conflict resolution.

4.4 Case Management System

Recommendation # 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.

CLHIO’s Toronto and Montreal offices have always used the same CAC system to record and track enquiries (mostly telephone calls). However, until recently, the Toronto office was used an Excel database for compiling statistics on complaints and the Montreal office used a data management program that had been customized to meet CLHIO’s needs. The Montreal program worked very well. The Toronto database had serious limitations. For example, all numbers had to be counted manually and the database could not be accessed if someone else was using it. It was difficult to integrate reports produced by the two sites.

There were also inconsistencies in how complaints were recorded. Complaints were recorded on a fiscal year basis and OmbudService Officer cases were recorded on a calendar year basis. The system did not reveal the reason why consumers did not go “up the ladder” of CLHIO’s dispute resolution system.

A significant sum had been allocated to CLHIO's budget for the purpose of developing a new computer-based case management system for CLHIO. Instead of moving to a new program, however, a recent decision was made to use (with minor modifications) the Montreal program in both offices. This was a prudent decision, which saved CLHIO both time and money. Implementation of the new program was completed in the summer of 2008 at a modest cost.

This integration will allow management to receive consistent statistical information from both sites and will give it the flexibility to create regular and ad hoc reports. This will, in turn, enhance the effectiveness, timeliness, and accountability of the operation. CLHIO could, for example, enter the end dates of the key steps in its procedures so as to monitor compliance with benchmarks. This same information could be used as a performance management indicator.

To maximize the potential of the case management system, I recommend that CLHIO increase its capacity, as necessary, to best serve the organization. It would be useful to obtain detailed information based on functional activities; that is, information/education, complaints, investigation, and non-binding recommendations. As well, I recommend that CLHIO analyze the data and reports it receives on a regular basis, and use the analyses to make appropriate changes to its policies and procedures.

4.5 Internal Documentation

Recommendation # 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.

As described earlier, CLHIO has grown in an incremental fashion. It has inherited staff, programs, and terminology. Its documents have been variously drawn up by CLHIA and CLHIO. In my view, what has resulted is a "patchwork." In some cases there are ambiguities and inconsistencies within individual documents and communication materials; there are even more issues amongst them. After decisions are taken in relation to this Report, I recommend that CLHIO embark on a project to rationalize all of its internal documents and materials. CLHIO's *Terms of Reference*, *By-Laws*, policies and procedures, forms, brochures, website, templates, and precedents are amongst those that should be subject to scrutiny.

4.6 Conclusion

CLHIO has been entrusted with an important public interest mandate; namely, to assist consumers who have complaints relating to life and health insurance products and services provided by member companies. In its first six years of operation, CLHIO has worked hard to gain acceptance from the insurance industry. It has been successful in that regard. CLHIO has also responded to a number of changes to the services it provides and it has put in place policies and procedures to react to those changes. This has been no mean feat.

With six years of experience behind it, the time is ripe for CLHIO to move to the next generation. In my view, that move will occur as the changes called for in this Report are made. Some of the proposed changes are so fundamental to the credibility of CLHIO that I believe they must be made as soon as possible. The changes relating to independence fall into that category. Some proposed changes will require that intermediate steps be taken before fully informed decisions can take place. The recommended survey regarding levels of awareness is an example of an intermediate step. I expect that other changes, such as the revisions of policies and procedures, will be made incrementally. It is likely that many of the proposed changes, such as staff development, will be repeated on a regular basis.

In my view, acceptance of the recommendations offered in this Report will allow CLHIO to meet the appropriately high standards that have been set by the regulators. Implementation of the recommendations should support the kind of culture change that will, in turn, enhance CLHIO's stature in the community that is answerable to.

It is imperative that CLHIO be able to serve the public interest. To do that it must be and be perceived to be independent. If it is not, it will have no credibility with its customers and with industry regulators. It must increase its public profile. If people are not aware of CLHIO, it can be of no potential value to them. And CLHIO must enhance the professionalism of the organization. If it does not, it will not be able to demonstrate its effectiveness in the future.

In my view, all of these imperatives are within CLHIO's reach. To achieve the changes that will take it confidently into the next generation, however, it will need the support of both the member companies that fund it and the regulators who work with it.

It is my hope that the recommendations that are embodied in this Report will assist CLHIO in developing a strategic plan and annual operational plans that will align with the direction that is envisioned. I see great potential for more business, a higher degree of resolution and, ultimately, improved relationships between the insurance industry and the consumers it does business with.

Respectfully submitted,



Leslie H. Macleod, B.A., LL.B., LL.M. (ADR)

**APPENDIX “A”
LIST OF RECOMMENDATIONS**

Recommendation # 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.

Recommendation # 2:

Bring CLHIO’s By-Laws and Board Committee structure into compliance with the Implementation Guidelines relating to Independence.

Recommendation # 3:

Explore opportunities for inclusion of a consumer representative on the Board of Directors.

Recommendation # 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.

Recommendation # 5:

Revisit CLHIO’s budget after the Board of Directors has considered this Report. For in-year 2008-2009, and thereafter, take into account the three-year strategic plan and supporting yearly operational plans developed by the Executive Director and approved by the Board.

Recommendation # 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.

Recommendation # 7:

Publish biographical statements of the members of the Board of Directors.

Recommendation # 8:

Appoint Officers that are full-time or part-time CLHIO employees.

Recommendation # 9:

Ensure that CLHIO Officers are not employed by or otherwise associated with the CLHLA or an insurance company member.

Recommendation # 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.

Recommendation # 11:

Publish a biographical statement for the Senior Adjudicative Officer(s).

Recommendation # 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.

Recommendation # 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.

Recommendation # 14:

Monitor for and investigate any inconsistencies in the approaches of staff or failures to follow prescribed procedures and address, as appropriate, any concerns.

Recommendation # 15:

Publish biographical statements for each of CLHIO's staff and members of management.

Recommendation # 16:

Take responsibility for all aspects of the employer role for those who work for CLHIO.

Recommendation # 17:

Acquire in-house or independent external expertise in the areas of law; human resources; accounting, payroll, and benefits administration; and information technology.

Recommendation # 18:

Obtain office premises in Montreal that are not in the same building as either CLHLA or a member company.

Recommendation # 19:

Engage the services of an independent organization to conduct a professional survey of the level of awareness about CLHIO.

Recommendation # 20:

Require insurance companies to advise consumers of CLHIO's services and contact information – at three points of time:

- *when the policy is originally sent to the consumer;*
- *when the consumer initially complains to the insurer; and*
- *when the letter of denial is sent (as is done currently).*

Recommendation # 21:

Promote greater awareness of CLHIO and its services by requesting that organizations such as the following provide information:

- *employers (through their industry associations) and unions (through their provincial and national associations);*
- *independent agents who sell the products of member companies (and their industry associations); and*
- *federal and provincial regulators.* |

Recommendation # 22:

Explore technological means to enhance the link between key words and CLHIO’s website and consider other means of enhancing communication about CLHIO and its services.

Recommendation # 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 that they sponsor.

Recommendation # 24:

Canvass opportunities for spreading awareness through governmental, professional, and community organizations.

Recommendation # 25:

Rename the Canadian Life and Health Insurance OmbudService to one that is more distinctive.

Recommendation # 26:

Negotiate with member companies with a view to reserving the term “Ombuds” for CLHIO and re-titling company Ombuds to “Consumer Complaints Officer.”

Recommendation # 27:

Improve accessibility to CLHIO’s services by:

- *allowing consumers to access CLHIO’s complaint form and agreement and authorization form online, if desired;*
- *extending the hours of telephone service from 8:00 a.m. to 7:00 p.m. on Monday through Friday; and*
- *making arrangements to provide services to people with disabilities.*

Recommendation # 28:

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

Recommendation # 29:

Develop a mechanism that allows for consultation with regulators, industry, and consumers.

Recommendation # 30:

Develop a clear fairness standard that is harmonized across the OmbudServices that comprise FSON and is approved by CLHIO’s Board of Directors.

Recommendation # 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.

Recommendation # 32:

Review the appropriateness of retaining the CAC functions that are not closely connected to complaints.

Recommendation # 33:

Develop up-to-date role descriptions that include job responsibilities and the qualifications required for the role.

Recommendation # 34:

Make optimal use of the dispute resolution methods that are available.

Recommendation # 35:

Change the titles of staff to more accurately reflect the essential nature of the work that they do.

Recommendation # 36:

Consider options to improve effectiveness and efficiency through streamlining roles and responsibilities.

Recommendation # 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 and any further material information or documentation that may be reasonably required by the insurance company. Permit CLHIO to extend this time limit in exceptional circumstances in accordance with established Guidelines.

Recommendation # 38:

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

Recommendation # 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.

Recommendation # 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.

Recommendation # 41:

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

Recommendation # 42:

Require prior written consent from the consumer before contacting an insurance company to discuss that consumer's concerns.

Recommendation # 43:

Retain the original written consent of the consumer in the main file kept in Toronto and keep a copy in any duplicate file.

Recommendation # 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.

Recommendation # 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 the training program offered to all staff.*

Recommendation # 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 the training program offered to all staff.*

Recommendation # 47:

Develop written recruitment procedures for future recruitment covering matters including hiring criteria, advertising for positions, screening applications, checking references, retaining letters of offer, and retaining letters of employment/retainer, and adopt consistent recruitment practices that are in compliance with the procedures.

Recommendation # 48:

Maintain insurance industry expertise as an important criterion for selection of Telephone Counsellors, Complaints Counsellors, and OmbudService Officers.

Recommendation # 49:

Develop a comprehensive manual of operational procedures and share it with the staff.

Recommendation # 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; and
- evidentiary standards.

Recommendation # 51:

Develop a performance management system, tailored to the unique responsibilities of CLHIO staff.

Recommendation # 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.

Recommendation # 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.

Recommendation # 54:

Develop a three year consultation plan which commits to regular discussions with stakeholders, including consumer organizations, member companies, and regulators.

Recommendation # 55:

Continue to work with regulators to conclude a mutually acceptable Protocol on information to be provided by OmbudServices to regulators.

Recommendation # 56:

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

Recommendation # 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.

Recommendation # 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.

Recommendation # 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.

Recommendation # 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.